

**Using pre-recorded investigative interviews to improve the quality of complainant
evidence in rape cases**

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Abstract

There is a sound empirical basis to suggest that the pre-recorded interview of an adult rape complainant made during the investigation should provide the court with more accurate, detailed and complete testimony than live evidence later given at trial. The timeliness of the interview, and the different questioning and interviewing strategies used by police when compared to prosecutors, are all likely to improve the quality of the complainant's recall (*e.g.* Memon et al., 2010; Powell et al., 2005; Read & Connelly, 2007). Despite these potential improvements, pre-recorded evidence is seldom used with adults (Kingi & Jordan, 2009; Stern, 2010). In part this may be due to the limited systematic research that examines whether the potential benefits are seen in practice. The purpose of the present thesis was therefore to explore how using pre-recorded evidence may improve the quality of information complainants provide and thereby outcomes in rape cases.

In the first two of three studies a mixed-methods approach was used to explore the perceptions of police ($N=136$) and then prosecutors ($N=30$) regarding the use of video interviews for investigations and evidence. A questionnaire firstly used a between subjects design to determine whether question type and interview format in a mock rape complainant transcript influences judgments about accuracy and decisions to charge. Next, perceptions about the advantages and disadvantages of using the video recorded interview were explored. Finally, a list of characteristics was rated according to what denoted an effective investigative interview. This was compared with how they rated the same characteristics for what provides the best evidence. The findings suggest that for both police and prosecutors accuracy, detail and completeness are three of the most desirable traits for investigations and for evidence. The enhancement of these traits was also the most commonly cited benefit of the video recorded interview. Poor questioning methods were ranked as the least desirable characteristics for both investigations and evidence. The presence of these characteristics in the interview was cited as a disadvantage of the video by both groups as it was considered that this may diminish complainant credibility judgments. Supporting the importance of questioning methods, both groups rated the mock transcript of the complainant's account as less accurate and that they were less likely to charge or recommend charges when poor questioning was used. Commonly cited disadvantages of both police and prosecutors was that pre-recorded evidence may be less impactful as evidence both due to the video medium and

interview format. The findings suggest concerns about interview format relate to the long free narratives likely generated by the cognitive interview contrasting with expectations of a more controlled eliciting of testimony from the complainant.

The third study presented in this thesis was the only study to ever use a within subjects design to compare the investigative interview of the complainant with their live evidence at trial in real rape cases ($N=10$). Content consistency, questioning and interview format were examined. A customised consistency coding scheme was developed to particularize details that may make complainant's testimony more convincing. Findings indicated that over two thirds of the details in the interview that were central to establishing the offending were later omitted from live evidence. This loss of detail was most pronounced with cognitions that may form a vital part in explaining counter-intuitive behaviour by the complainant such as her own explanation for her behavioural response (see Ellison, 2007, Tempkin, & Krahé, 2008). Also diminished were details about verbalizations, physical actions and emotions, that may reduce ambiguity around consent and add to the convincingness of complainant testimony. For example, details about conversations around the issue consent. A small number of inconsistencies between the interview and live evidence suggest accuracy was also reduced (*e.g.*, Powell et al., 2005; Read & Connelly, 2007). Both police and prosecutors predominantly used closed questions, but open questions elicited a majority of the information. The significantly longer question responses and use of cognitive interview techniques by police may explain some of the differences in testimony found.

The findings clearly suggest that the quality of information received by jurors is severely diminished when rape complainants give live testimony compared with a police interview. Pre-recorded evidence is perceived by police and prosecutors as a legitimate means of improving the quality of complainant testimony and thereby, given the central role of complainant testimony, increasing convictions in rape cases. Empirical evidence of actual court cases indicates that reality is consistent with these perceptions.

This work has not previously been submitted for a degree or diploma in any university. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

(Signed)  _____

Nina Westera

Date: 7 December 2011

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Table of Contents

List of Tables	ix
List of Figures	x
Statement about contribution to jointly authored works and publications	xi
Chapter 1: Pre-recorded evidence and the present study	1
<i>Interviewing witnesses: Do investigative and evidential requirements concur?</i>	<i>3</i>
<i>Advances in investigative interviewing</i>	<i>3</i>
<i>When investigations and trials meet</i>	<i>6</i>
<i>Conclusion</i>	<i>13</i>
<i>The problem with rape cases</i>	<i>13</i>
<i>The present thesis.....</i>	<i>15</i>
Chapter 2: Interviewing rape complainants: Police officers' perceptions of interview format and quality of evidence.....	17
<i>Method</i>	<i>24</i>
<i>Results.....</i>	<i>26</i>
<i>Discussion.....</i>	<i>34</i>
Chapter 3: It is better, but does it look better? Prosecutor perceptions of using rape complainant investigative interviews as evidence.....	39
<i>Method</i>	<i>44</i>
<i>Results.....</i>	<i>46</i>
<i>Discussion.....</i>	<i>53</i>
Chapter 4: Losing two thirds of the story: A comparison between recorded police interviews and the live evidence of rape complainants.	58
<i>Method</i>	<i>64</i>
<i>Results.....</i>	<i>69</i>
<i>Discussion.....</i>	<i>74</i>
<i>Conclusion</i>	<i>79</i>
Chapter 5: General discussion	80
<i>Summary of findings and theoretical implications</i>	<i>81</i>
<i>Limitations</i>	<i>86</i>
<i>Recommendations for practice</i>	<i>88</i>
<i>Suggestions for future research</i>	<i>93</i>
<i>Conclusion</i>	<i>94</i>

Appendix A: Promoting pre-recorded complainant evidence in rape trials: Psychological and practice perspectives.....	95
Appendix B: Abstracts from the papers presented in chapters 1, 2, 3 & 4.....	106
Appendix C: Transcript conditions	109
Appendix D: Example police questionnaire.....	114
Appendix E: Example prosecutor questionnaire	138
Appendix F: Case summaries.....	146
Appendix G: Prosecutor questionnaire for transcript study	152
Appendix H: Coding guidelines and schedule	158
References	169

List of Tables

Table 2.1	<i>Means and standard deviations for interview condition broken down into type of information provided.</i>	<i>27</i>
Table 2.2	<i>Means and standard deviations for interview condition broken down into participants' judgments on likelihood the alleged offender committed the offence and case outcome.</i>	<i>28</i>
Table 2.3	<i>Rankings, means and standard deviations for the best characteristics of the complainant's account when used for investigative or evidential purposes.....</i>	<i>31</i>
Table 3.1	<i>Means and standard deviations for interview condition broken down into type of information provided.</i>	<i>47</i>
Table 3.2	<i>Means and standard deviations for interview condition broken down by judgments on likelihood the alleged offender was guilty.....</i>	<i>48</i>
Table 3.3	<i>Rankings, means and standard deviations for the best characteristics of the complainant's account for investigative or evidential purposes.</i>	<i>50</i>
Table 4.1	<i>Means and (standard deviations) for percent of question types and response word count during the interview and live evidence</i>	<i>70</i>
Table 4.2	<i>Means and (standard deviations) for number of details by type and consistency of live evidence with the interview</i>	<i>73</i>

List of Figures

Figure 4.1	<i>Mean response word count by question type for the investigative interview and live evidence.....</i>	<i>71</i>
Figure 4.2	<i>Mean number of details by type and consistency of live evidence with the interview.....</i>	<i>74</i>

Statement about contribution to jointly authored works and publications

Contributions by others to the thesis as a whole

Mark Kebbell (primary supervisor) was responsible for comment on the design of the research programme and reviewing the thesis. Becky Milne (associate supervisor) provided advice on the design of the research programme and reviewed the thesis. I was responsible for the remainder of the work including conception and design of the research project, data coding and analyses, writing and revising the thesis.

Acknowledgement of published papers included in this thesis

Section 9.1 of the Griffith University Code for the Responsible Conduct of Research (“Criteria for Authorship”), in accordance with Section 5 of the Australian Code for the Responsible Conduct of Research, states:

To be named as an author, a researcher must have made a substantial scholarly contribution to the creative or scholarly work that constitutes the research output, and be able to take public responsibility for at least that part of the work they contributed. Attribution of authorship depends to some extent on the discipline and publisher policies, but in all cases, authorship must be based on substantial contributions in a combination of one or more of:

- conception and design of the research project
- analysis and interpretation of research data
- drafting or making significant parts of the creative or scholarly work or critically revising it so as to contribute significantly to the final output.

Section 9.3 of the Griffith University Code (“Responsibilities of Researchers”), in accordance with Section 5 of the Australian Code, states:

Researchers are expected to:

- Offer authorship to all people, including research trainees, who meet the criteria for authorship listed above, but only those people.
- accept or decline offers of authorship promptly in writing.
- Include in the list of authors only those who have accepted authorship
- Appoint one author to be the executive author to record authorship and manage correspondence about the work with the publisher and other interested parties.
- Acknowledge all those who have contributed to the research, facilities or materials but who do not qualify as authors, such as research assistants, technical staff, and advisors on cultural or community knowledge. Obtain written consent to name individuals.

Included in this thesis are published papers in *Chapters 1, 2, 3 and 4* which are co-authored with other researchers. My contribution to each co-authored paper is outlined at the front of the relevant chapter. The bibliographic details for these papers are:

Incorporated in Chapter 1

Westera, N., Kebbell, M., & Milne, R. (2011). Interviewing witnesses: Do investigative and evidential requirements concur? *British Journal of Forensic Practice*, 13, 103-113.

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Incorporated as Chapter 4

Westera, N., Kebbell, M., & Milne, B. (In submission). Losing two thirds of the story: A comparison between recorded police interviews and the live evidence of rape complainants. *Law and Human Behavior*.

Additional published works by the author


The following co-authored journal article is relevant to the thesis but did not form part of it and is attached in the appendix. The bibliographic details for this paper are:

Incorporated as Appendix A

Kebbell, M. R., & Westera, N. J. (2011). Promoting pre-recorded complainant evidence in rape trials: Psychological and practice perspectives. *Criminal Law Journal*, 35, 376-385.

Mark Kebbell and I conceptualized the article. Mark Kebbell wrote the bulk of the article with reviewing and editing by myself.

Appropriate acknowledgements of those who contributed to the research but did not qualify as authors are included in each published paper.

(Signed)  _____

Nina Westera

(Countersigned) _____

Supervisor: Mark Kebbell

Chapter 1: Pre-recorded evidence and the present study

The purpose of the present thesis is to explore how using a video-recorded interview of a complainant made during the investigation as their evidence may improve the quality of information in rape cases¹. This chapter sets the context for this thesis by discussing the implications of legislation in many developed nations that now allows this mode of evidence with adult witnesses. The potential benefits to the quality of information for eyewitnesses in general are discussed with reference to the effects of delay on memory recall, and the different questioning and interviewing strategies used by police and prosecutors. The chapter goes on to examine how pre-recorded complainant evidence may specifically provide some solution to the problem of attrition in rape cases. The problem of low conviction rates is discussed with reference to the central importance of complainant evidence in these types of cases. It is argued that the potentially under-utilized method of pre-recorded evidence may improve the quality and quantity of complainant testimony. With limited systematic research on this topic to date, the purpose of this thesis and studies within it are outlined.

¹ Of note, this thesis is almost entirely composed of articles either published or submitted for publication. For ease of reading the abstracts for these articles have been placed in Appendix B and replaced with descriptions of each chapter and how they fit into the thesis as a whole. Footnotes are also added to these articles to provide reference to the instruments that were used and are attached in the Appendix.


Statement of contribution to co-authored published paper

This chapter commences with a co-authored published paper the finish of which is indicated by a footnote. The bibliographic details of the published paper, including all authors, are:

Westera, N., Kebbell, M., & Milne, R. (2011). Interviewing witnesses: Do investigative and evidential requirements concur? *British Journal of Forensic Practice*, 13(2), 103-113.

My contribution to the published paper involved:

Writing and reviewing the article. Mark Kebbell and Becky Milne were responsible for reviewing the article.

(Signed)  _____

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Corresponding author of published paper: Becky Milne

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Supervisor and corresponding author of published paper: Mark Kebbell

Interviewing witnesses: Do investigative and evidential requirements concur?

Witnesses are central to many criminal cases, indeed, some have argued they provide the most critical evidence in court (Kebbell & Milne, 1998; Zander & Henderson, 1993). Consequently considerable attention has been paid to eliciting reliable and detailed information from witnesses during interview (Milne & Bull, 1999). Traditionally, witnesses provide their accounts at two separate phases of the criminal justice process, firstly during the investigation and later when giving evidence during criminal proceedings. The separation of these phases has meant that the interview can be tailored to meet either investigative or evidential needs. However, advances in technology and attempts to improve the judicial process for witnesses have changed this process (e.g. Criminal Justice System, 2007). Under certain circumstances legislation in many developed nations allows for the video recorded interview of the witness made during the investigation to be used as his or her evidence-in-chief at trial. In this paper we discuss the challenges for the criminal justice system of trying to make one interview meet both investigative and evidential purposes. Advances in effective police interviewing strategies are outlined and evaluated with regards the implications of presenting evidence elicited in this manner in court.

Advances in investigative interviewing

The purpose of the investigation is to establish what, if any, criminal offending has taken place and the identity of those who may be culpable for that offending (Kebbell & Wagstaff, 1997). To achieve this goal police seek information from a number of sources including witnesses and a successful interview can be conceptualized as one where the evidence elicited is accurate and complete. Until recently, commonly accepted practice was for an officer, who had received minimal training in this process, to produce a hand written statement from information elicited during interview considered relevant to the investigation (Milne & Bull, 1999). After being endorsed by the witness, the statement was used as the basis for investigative decision making and potential evidence the witness would give in court.

Over the past thirty years however, psychological research enhancing the understanding of how the interview process can affect a witness's memory recall of events, have led to advancements in police practices in many jurisdictions. Of particular importance are the findings that memory is fallible and retrieval is a reconstructive process that can be influenced by questioning and interviewer behaviour (see Baddeley,

Eysenck, & Anderson, 2009). Influential work by Elizabeth Loftus and her colleagues demonstrated just how easy it is to contaminate eyewitness memory through the use of subtly leading questions such as “did you see the red car?” (e.g. Loftus, Miller, & Burns, 1978; Loftus & Palmer, 1974). Open questions such as “tell me what happened...” are generally considered the best type of questions to use because they encourage a detailed and unrestricted answer and are therefore less likely to influence the witness (see Milne & Bull, 1999). As a general proposition, as questions become more specific, responses become less accurate (Kebbell & Wagstaff, 1999). Open questions (e.g. if the witness previously mentioned an ‘attacker’ - ‘describe your attacker’), specific-closed questions (e.g. if the witness previously mentioned a ‘shirt’ - ‘what colour was his shirt?’), and yes/no questions (e.g. ‘was he carrying anything’) can all have a dramatic influence on the accuracy of witness answers (e.g. Lipton, 1977; Loftus & Palmer, 1974).

Fisher and Geiselman pioneered methods of enhancing memory recall and police practices with their development of the cognitive interview (Fisher & Geiselman, 1992). The original cognitive interview (CI) constituted four mnemonics in the form of instructions for the witness. The report everything instruction requires the witness to tell all without editing anything out (including partial memories and memories they are unsure about). Mental reinstatement of context helps the witness recall by placing them back mentally in the physical and emotional context using a series of verbal instructions. The reinstate context and report everything mnemonics are based on the encoding specificity principle which theorize that the greater the feature overlap between encoding and retrieval conditions the more effective the retrieval (Tulving & Thomson, 1973). The other two mnemonics use multiple and varied retrieval techniques derived from the multicomponent view of a memory trace that different information may be retrieved from memory using different retrieval pathways (e.g. Tulving, 1974). These techniques include asking the witness to change temporal order of reporting (e.g. backwards recall) and change perspectives (e.g. from another person’s viewpoint).

Field testing of the CI led refinements by including a structure for the interviewer to follow, appropriate communication skills and additional mnemonics (see Fisher, Geiselman, & Raymond, 1987; Fisher & Geiselman, 1992). Encouraging free narrative recall through open-ended questioning, not interrupting, and structuring the interview according to the witness’s memory of events are integral to the CI. A meta-analysis showed similar accuracy rates for the CI (85%) to comparison control

interviews (81%), with the CI conditions eliciting an average of 41% more correct details (Köhnken, Milne, Memon, & Bull, 1999).

Technological advances also mean that police are moving away from producing a written statement from the interview in favour of video recording (Criminal Justice System, 2007; Schollum, 2006). Barristers Heaton-Armstrong and Wolchover (1992) were one of the first to argue that written statements are mistakenly treated by the criminal justice system as a verbatim record of interview:

There is a certain coyness on the part of most officers, when asked how they “took” a statement, in admitting that the narrative was obtained by questioning. The fiction is perpetuated that for the most part statements are the product of straight dictation. p 161

The production of a written statement involves the officer filtering through the information generated during the interview and deciding what should and should not be included in the statement. The cognitive demands of this task make it susceptible to distortion at many stages and the resulting statement is an abridged and often inaccurate version of what was said at interview (Köhnken, 1995; Milne & Shaw, 1999). This limitation is illustrated by the work of Köhnken, Thurer, and Zoberbier (1994) who found statements written by the interviewer immediately after the interview contained only about two thirds of the information reported by the witness. Lamb, Orbach, Sternberg, Hershkowitz, and Horowitz (2000) examined twenty child interviews and found the interviewer’s ‘verbatim’ notes were missing 25% of the forensically relevant details elicited by the witness. Also, in an attempt to control the flow of information the interviewer may use more closed and leading questions to the detriment of accuracy (Westera, Kebbell & Milne, 2010). For these reasons a number of psychological and linguistic professionals have also criticized the reliance on this method for lacking legitimacy and transparency (Milne & Shaw, 1999; Rock, 2001; Shepherd, 1999). Indeed, the fact that a statement is presented to give a coherent narrative of the event may mask limitations in the witness’s recall. For instance, Sanders, Creaton, Bird, and Weber (1997) found that many witnesses with intellectual disabilities appeared far more competent in their statements than in fact they actually were. Acknowledging these difficulties, many police services are moving towards video recording witness interviews to improve the quality of information for investigations (e.g. Criminal Justice System, 2007; Schollum, 2006).

Whilst undoubtedly with significant merits, particularly with regards transparency, this change to video recorded witness interviews has not been without

difficulties. Investigators who once had a manageable and chronologically-ordered statement now struggle to deal with a large amount of information recorded in a less structured format (Westera et al., 2010). Changes in legislation now mean prosecutors, defence counsel and judges are seeing the raw product of the interview for the first time.

When investigations and trials meet

Traditionally, a witness gives evidence in chief orally in court before the accused by answering questions from a prosecutor about their recollection of events. The witness is then cross-examined by defence counsel who attempts to raise doubt and highlight inconsistencies and generally discredit the witness' account (Danet, 1980). To clarify any issues brought-up during cross-examination, the witness may then answer further questions from the prosecutor during re-examination. In an attempt to improve the court process for witnesses (especially complainants), many jurisdictions are moving towards allowing their video interview to be used as their evidence-in-chief. First introduced for child witnesses, this process has been expanded to include other types of witnesses such as those deemed 'vulnerable' (e.g. people with learning disability) and those deemed 'intimidated' (e.g. victims of sex offences; Criminal Justice System, 2007; Advisory Group on Video Recorded Evidence, 1989; Mahoney, McDonald, Optican, & Tinsley, 2007). The interview generated during the investigation is typically the same one that is used as evidence bringing police interviewing practices under the scrutiny of the courts. What is of practical significance here is how well an initial police interview can meet both investigative and evidential purposes? Indeed, the term is investigative interviewing and not evidential interviewing. In an attempt to answer this question the following main considerations will be examined; – (i) reliance on the written statement, (ii) the rules of evidence, (iii) the effectiveness of the evidence, and (iv) the impact of the process on victims and witnesses.

Reliance on the written statement

Despite the previously discussed shortcomings, the written statement still plays a central role in the judicial process. The statement is relied on to outline the witness's evidence, for prosecutorial and judicial decision making, and as a memory refresher for the witness before trial months or sometimes years after it was made (Heaton-Armstrong & Wolchover, 1992). Inconsistencies between the written statement and the witness's oral evidence, although hardly surprising given the previously mentioned issues, may be used to discredit the witness during cross-examination. A move towards more accurate witness testimony requires an understanding that the written statement is

not the verbatim record it was previously assumed to be. With the absence of the interviewer filtering and ordering the information, the video record may be more difficult to comprehend due to the additional detail and the witness recalling their account as they remember it which may not be in a succinct and logical manner. In addition video evidence may be more time consuming to review before trial, but this should be tempered with savings in time further through the process from better decision making as a result of better evidence as discussed further below.

Rules of evidence

Arguably both investigative and evidential processes form part of the same criminal justice system seeking to hold accountable those who commit offences without punishing those who are innocent. Nevertheless, difficulty arises because each process has a different purpose and is governed by different rules resulting in the value of information provided by the witness being assessed by different measures. During the investigation phase, relevance of the information may be unknown so a catch-all approach is required where information is gathered in an attempt to form a complete picture as to what has happened. The investigator is privy to all the information available to determine whether any suspect is charged. When a suspect is charged the rules of evidence determine what is and is not presented before court. The best evidence principle is one such rule and prefers the court to receive the highest quality of evidence available to enhance the “truth finding process” (Mahoney et al., 2007).

In England, Wales and New Zealand and presumably other jurisdictions, this is a central test for decisions to use the video as evidence (Criminal Justice System, 2007; Mahoney et al., 2007). If interviewed appropriately, there can be little doubt that the video record is the best evidence available from the witness in terms of both accuracy and completeness. The record is transparent and captures everything said and done by both the witness and the interviewer, allowing for the detection of inappropriate interviewing methods. The interview is also conducted more contemporaneous to the offence when the witness is less likely to be susceptible to the effects of forgetting than when at trial, which can often be months and sometimes years later (see Baddeley et al., 2009). Using the record made nearer the time of offending also minimises the risk of memory distortions through exposure to co-witnesses, the media and other extraneous sources (e.g. Loftus & Banaji, 1989; Gabbert, Memon, & Allen, 2003). Additionally the video may act as an effective memory refresher for the witness allowing them to give better evidence in cross-examination and re-examination. Video recording the interview

also allows for effective decision making by both the prosecutor and defence counsel as both parties are fully aware of the witness's exact evidence. In turn this can have benefits to the courts in terms of the laying of appropriate charges and early resolutions. Potentially higher quality evidence that can be reviewed by the defence team, rather than them speculating on how a witness will perform, may result in more guilty pleas and deliver a benefit in terms of time taken in court.

However, the best evidence principle must also be balanced with the requirements of relevance and admissibility (Mahoney et al., 2007). Relevance is determined by the relationship of the evidence to the facts given the circumstances of each case. As a general rule it is the 'tendency to prove or disprove anything that is of consequence in determining the proceeding' (Mahoney et al., 2007). Some of the information the witness provides during the scoping exercise of the investigation, may be irrelevant to criminal proceedings. The evidence may also be deemed inadmissible if its probative value is outweighed by the risk that it will have an "unfairly prejudicial effect on the proceeding" or "needlessly prolong the proceeding" (Mahoney et al., 2007).

Admissibility was an issue primarily dealt with through editing when child interviews were introduced to the courts. A review of all trials involving child witnesses in England and Wales over a 20 month period found 27% of video interviews used as the child's evidence required editing (Davies, Wilson, Mitchell, & Milsom, 1995). The average length of interview was 30.36 minutes. However, further difficulty arises with adults because children are typically prone to errors of omission by providing shorter responses to questions and not giving as much detail (e.g. Lamb et al. 2000; Marin, Holmes, Guth, & Kovac, 1979). Interviews with adults are typically longer, for example in 2009 the average length of video recorded interviews with adult witnesses at the Wellington Police Station in New Zealand was 116 minutes (personal communication with Detective Deborah Braun). The extra time and free narrative format of adult interviews may lead to concern about relevance and admissibility and "needlessly prolong" proceedings. Whether the time taken to play a video interview as evidence-in-chief varies from the time taken to give evidence orally is not known, nor is it known how the different modes affect cross-examination times. Further, peripheral information not typically rendered in oral evidence is often subject to cross-examination (Davies et al., 1995). This situation may be avoided if the evidence in chief is more complete as is likely the case with a detailed contemporaneous account. It is also still possible that a

more detailed and accurate account as provided by a video recording may lead to more inconsistencies in a 'live' cross examination if there is a long delay between investigation and trial.

The legislative interpretation of what is relevant is relational to the facts of the case. Whereas an ideal investigative approach is to 'report everything', thereby increasing the likelihood of accessing different information using different retrieval pathways in memory (Fisher & Geiselman, 1992). Strict rules of relevance therefore may inhibit a witness's ability to give an accurate and complete as possible account. To achieve best evidence perhaps a broader interpretation is required allowing the ability to accurately ascertain the facts to determine relevance.

One persistent factor is that despite training, interviewers of adult witnesses tend to more readily use closed and leading questioning rather than open questions (e.g. Clarke & Milne, 2001; Clifford & George, 1996). This can lead to greater inaccuracies that previously remained hidden in the written statement process, and could result in the video interview being ruled inadmissible. Interestingly, lawyers also tend to use closed and sometimes leading rather than open questions (Danet & Bogoch, 1980; Kebbell, Deprez, & Wagstaff, 2003), as do specially trained child interviewers (e.g. Cederberg, Orbach, Sternberg, & Lamb, 2000; Lamb, Sternberg & Esplin, 2000). Ironically, any concerns about the overly long interviews and additional irrelevant information, may be due to the use of appropriate open questioning techniques which enhance the accuracy and completeness of the information.

Effectiveness of the evidence

If the interview satisfies the rules of evidence the next consideration is whether it is likely to be effective evidence. Ultimately the adversarial system was designed to establish the 'truth' via two different sides presenting their arguments, however effectiveness of both parties is measured by the ability to influence the jury (Danet, 1980). For prosecutors, it has been argued the purpose of questioning the witness is to provide the jury with information the prosecutor already knows, in fact they are discouraged from asking questions that they do not know the answer to (Danet, 1980; Evans, 1994). Questioning is about the presentation of evidence rather than just the eliciting of complete and accurate information. Using the police interview reduces the ability of prosecutors to elicit the evidence in a persuasive way such as emphasizing important aspects of the evidence, forewarning against negative evidence and using repetition (Voss, 2005). However, discussion about effectiveness of presentation of

evidence must be bound by the ability for the evidence to enhance effective decision making by the jury in establishing the ‘truth’. Two issues arise from this: how the method of presentation and how the interview format affects the persuasiveness of the evidence.

The introduction of using child witness video interviews as evidence in the 1980’s and 90’s provides some insight into the effectiveness of using a video as evidence. Four years after implementation, a review of prosecutions with child witnesses in England and Wales found no differences in guilty verdicts or guilty pleas when evidence was given by video interview compared to live (Davies et al., 1995). There was no empirical support for concerns by judges and barristers that the children would lack preparedness for cross-examination, false allegations would not be detected, and the method was less impactful than live evidence. This research is supported by other experimental and field studies suggesting using video testimony does not diminish the effectiveness of the child’s evidence (see Davies, 1999, for a review).

Only a few experimental studies have examined the effectiveness of using video interviews of adults as evidence when compared to live evidence. Kemp, Towell, Pearson, Wright, Donnelly, Woods et al. (1986) found mock juror’s ability to recall testimony of a witness to a mugging did not vary between live and video conditions. Taylor and Joudo (2005) used mock juries to examine how different modes of evidence affect perceptions of adult rape complainant testimony. Closed circuit television was compared to pre-recorded video and live evidence for eighteen different mock juries. Mode of presentation did not affect individual juror’s pre-deliberation ratings of complainant credibility or the accused person’s guilt. Guilt ratings and verdict after deliberation did not vary between conditions, although in this study juries were only allowed to deliberate for one hour resulting in sixteen hung juries. In comparison Landström, Granhag, and Hartwig (2005) found that individual mock jurors gave higher ratings for appearance in terms of eloquence and pleasantness of an adult witness to an accident in the live condition than in the video condition. However, they found no differences in jurors’ judgments about the quality of the testimony or ability to assess veracity. Interestingly, participants incorrectly believed they had a better memory for the live than the video testimony. Further research and on-going evaluation is required to explore this area before any firm conclusions can be drawn, but these findings suggest that using the video may not reduce the effectiveness of the evidence.

In England and Wales the introduction of video recorded interviews as evidence for adults has raised some concerns about the format of the police interviews (which usually follow the CI format). Reviewers of the use of special measures with vulnerable adult victims made the following comment:

To ensure that video interviews result in the witness giving their best evidence care needs to be taken to make sure they are clear, of good quality and edited properly to make sure they are focused and not too long. We received some adverse comments from the judiciary and prosecutors in relation to the quality of the video interviews, to the effect that they were on occasions too long. The preamble and other formalities in particular, whilst necessary, can substantially lengthen the recording and distract attention from the important aspect of the evidence (p.27, Criminal Justice Joint Inspection, 2009)

The Stern Review which examined how rape complaints are managed by public authorities in England and Wales made similar criticisms about the ‘quality’ of police interviews and transferability into the court room (Stern, 2010). Interestingly, many of these criticisms appear to target what psychological research suggests are good interviewing practices. Building rapport and explaining the interview process at the beginning of the interview, and using open questions to encourage detailed long free narratives are considered by many experts as the cornerstone to interviewing best practice (e.g. Powell, Fisher, & Wright, 2005).

The limited studies on the effectiveness of the CI as evidence suggest the presence of the CI mnemonics alone is unlikely to affect perceptions on the accuracy of witness testimony (Kebbell, Wagstaff, & Preece, 1998; Westera et al., 2010). Drawing from research into witness factors affecting accuracy and credibility judgments, jurors use detail as a strong indicator of accuracy and CI have been shown to contain more detail (Bell & Loftus, 1989a, 1989b; Köhnken et al., 1999). Following a storytelling narrative is also considered important in assisting juror’s make credibility judgments and may be more prominent in the CI due to the emphasis on open questions (Snow, Powell, & Murfett, in press). The CI uses a witness-centric approach to explore the account according to how the witness remembers it, potentially resulting in a less logically structured narrative. This format may conflict with prosecutor perceptions that clarity and coherence are essential components to persuasive evidence (Davies, Hoyano, Keenan, Maitland & Morgan, 1999). However, the witness on video freely recounting events nearer to the time of the offending may lead to more spontaneous and graphic detail and emotion than examination in the formal court environment. Gruesome evidence like this may be more persuasive by inducing heightened emotional responses

in jury members (Bright, Goodman, & Delahunty, 2006). Jurors are only likely to use questioning as a gauge for adult witness accuracy when highly leading (Castelli, Goodman, & Ghetti, 2005; Ruva & Byrant, 2004).

Juror judgments about witness accuracy and credibility are also affected by confidence of the witness, consistency of information, and emotion congruent with juror expectations (Berman, Narby, & Cutler, 1995; Kaufmann, Drevland, Overskeid, & Magnussen, 2003; Wells, Lindsay, & Ferguson, 1979). Examining how these features differ in a CI when compared to other interview formats would provide more insight into the usefulness of the CI as evidence. Further research is also required into how change of temporal order and change of perspectives may affect perceptions of testimony, although in practice these techniques are seldom used (Dando et al., in press; Kebbell, Milne & Wagstaff, 1999).

One suggested means of making the video interview serve both investigative and evidential purposes is for police interviewers to adapt their approach to fit with evidential needs. This suggestion is problematic because interviews are critical for gaining enough quality and quantity of information to solve the case and advance to prosecution (Fisher et al., 1987). During the investigation it is simply not known what information the witness has and its relevance. Nor is it known, how the information is stored in the witness's memory and what retrieval process will help them access the memory effectively. Failure to interview effectively may also result in criticism from experts and risk the interview becoming inadmissible.

Responsiveness to victims and witnesses

Importantly, the judicial system is becoming more responsive to the needs of witnesses, especially victims and the effect of the process of giving evidence has on them. Reviews of legislation introduced for vulnerable witnesses in England and Wales suggests most complainants would like the option of using their video interview as their evidence (Burton et al., 2006; Hamlyn, Phelps, Turtle, & Sattar, 2004). Using this method means the complainant may only have to recount the full details of what occurred once, thereby likely reducing the trauma of the judicial process. From late 2010 adult victims of serious sex offences in these countries will have automatic admissibility of their video interview as their evidence in chief (Government Equalities Office, 2010).

Of course as previously mentioned an offender on seeing the video recorded evidence may decide to plead guilty. One study found testifying in a trial was one of

four significant predictors of PTSD symptoms in adult survivors of child rape, and another that having a civil lawsuit pending was one of three predictors of depression among adult victims (Epstein, Saunders, & Kilpatrick, 1997; Mackey, Sereika, Weissfeld, & Hacker, 1992). Thus, reducing the likelihood of having to give evidence seems a worthy goal in itself. A further benefit might be a reduction in the potential to intimidate victims and witnesses. If an offender knows that a pre-recorded evidence-in-chief exists he or she may feel less inclined to intimidate the potential witness.

Conclusion

Through providing the opportunity to use an adult witness's video interview as their evidence in chief, legislators have signaled the desire to improve the fairness of the judicial process and reduce trauma to victims and other types of witness. As with any significant change, the move towards this method of evidence will present challenges as new processes are developed and the system adapts. However, using this video record as evidence will ensure the best evidence is preserved and the jury has access to a transparent record that is more accurate and complete than previously experienced. Concerns over any extra time taken due to the nature of the video record, must be balanced against the likely long term benefits, not only in fairness to the proceedings but also by easing the process for victims and witnesses whatever their age². Next, the problem of attrition in rape cases and how using pre-recorded evidence to improve the quality of evidence from complainants may particularly benefit outcomes in rape cases is discussed.

The problem with rape cases

In the past thirty years the ability of the criminal justice system to effectively resolve adult rape cases has come under increasing scrutiny (e.g. Daly & Bouhours, 2010; Lees, 2002). Despite legislative reforms targeted at improving the process for adult rape complainants, self-report victimization surveys suggests only 14% of cases are reported to police (Daly & Bouhours, 2010). When cases are reported convictions are rare. A review of 75 attrition studies in Australia, Canada, England and Wales, Scotland, and the United States, found that between 1990 and 2005 on average only 12.5% of cases reported to police resulted in the defendant being convicted of a sexual offence (Daly & Bouhours, 2010). In NZ a similar pattern emerges, a review of sexual

² Published article concludes: Westera, N., Kebbell, M., & Milne, R. (2011). Interviewing witnesses: Do investigative and evidential requirements concur? *British Journal of Forensic Practice*, 13, 103-113.

assault cases held between July 2005 to November 2007 found that only 14% resulted in a sexual offence conviction (Triggs, Mossman, Jordan, & Kingi, 2009).

One reason for the low conviction rates is that the circumstances of the criminal activity means that it is not usually committed in front of independent witnesses and often there is little or no other evidence (Edwards, 2003; Lees, 2002). Even when objective evidence is available, such as DNA, it does not allow determination of the issue of consent and so may add little to a case when it comes to court. This absence of evidence creates difficulty in reaching the evidential threshold of beyond reasonable doubt required by the adversarial justice system to gain a conviction.

Indeed, when other evidence such as forensic evidence, injury, the presence of weapons, and independent eyewitness evidence is present these cases are more likely to successfully proceed through the justice process (Daly & Bouhours, 2010; Visher, 1987). However, the frequent lack of evidence and the defendant's entitlement to the right of silence, means the prosecution case often solely relies on the complainant's evidence and perceptions thereof. Optimizing the quality of the complainant's testimony may therefore provide a potential solution to this problem. One promising means of doing so is using the complainant's video-recorded investigative interview as their direct evidence. This mode of evidence previously reserved primarily for children is now available for adult rape complainants in many countries including New Zealand, England, Wales, Northern Ireland, Norway and the Northern Territory of Australia (Australian Law Reform Commission, 2010; Criminal Justice System, 2007; Mahoney et al., 2007; personal communication with Superintendent Rygh Norway Police Service). The timing of the interview, and the different questioning and interview strategies used by police mean this record is likely to be more complete, detailed and accurate than live testimony elicited by a prosecutor (*e.g.*, Köhnken, et al., 1999; Milne & Bull, 1999; Read & Connelly, 2007). Despite this possibility and the importance of the complainant's testimony in rape trials, in practice pre-recorded evidence is seldom used with adult complainants (Kingi & Jordan, 2009; Stern 2010). The limited systematic analysis on how the likely benefits to the complainant's recall actually translate into practice may be contributing to this slow uptake of pre-recorded evidence. Without knowing what the real differences are, there is little incentive for justice sector practitioners to move away from traditional practices.

The present thesis

The purpose of the present thesis was therefore to explore how using the video-recorded interview of a complainant as their evidence may improve the quality of information they provide and thereby outcomes in rape cases. To examine this issue three studies were conducted targeting the key phases of the justice system process.

The police are the first gate-keepers in the criminal justice process. The case will not proceed to prosecution if police believe there is insufficient evidence. Their views are also important because the ability to use the video as evidence depends on them video recording the interview in preference to the usual method of preparing a written statement. The first study therefore explores investigators perceptions about the advantages and disadvantages to video recording the interview. Investigators perceptions about whether the characteristics of an effective investigative interview differ from those that provide the best evidence for a jury trial were also examined. Further, access to a video recorded interview provides the benefit of being able to review the questioning and interview format used to elicit the information. Hence how questioning and interview format influence investigator's perceptions of complainant accuracy, credibility, and decisions to charge were also assessed.

When police do charge the alleged offender or offenders, prosecutors are the next gate-keepers in the criminal justice process. If the prosecutor does not believe there is a reasonable likelihood of conviction they may withdraw the charges. Furthermore, when the interview is video recorded, it is the prosecutor's decision as to whether to apply to use the video as the complainant's pre-recorded evidence. If the prosecutor does not believe the video is the best evidence, a jury may therefore never have the opportunity to view the police interview. Hence the second study extended the first by exploring prosecutors' perceptions about advantages and disadvantages of using the video as evidence. Again, perceptions about whether the characteristics of an effective investigative interview differ from those that provide the best evidence for a jury trial were examined. Also examined was how questioning and interview format influence prosecutor's perceptions of complainant accuracy, credibility, and decisions to charge.

If the case reaches trial a jury decides on the outcome based on the evidence presented at court. To my knowledge before now no studies have examined how a witness's testimony may differ if the pre-recorded police interview is used compared to live evidence. If pre-recorded evidence is more complete, detailed and accurate than live evidence this may increase the strength of evidence and thereby the likelihood of

conviction (Devine et al., 2001; Visher, 1987). The purpose of the third study was therefore to compare the content, questioning and interview format of the complainant's investigative interview with their live evidence given at trial in real rape cases. Finally, in the last chapter in this thesis a synthesis of the findings of these three studies and recommendations for both practice and future research are discussed.

Chapter 2: Interviewing rape complainants: Police officers' perceptions of interview format and quality of evidence

If police officers perceive the video enhances the evidential sufficiency of the complainant's account, they may be more likely to lay charges against the alleged offender. Furthermore, the ability to use the video as evidence depends on the police video recording the interview in preference to the usual method of preparing a written statement. However, no systematic research has examined police perceptions about using this method with adult rape complainants. Chapter Three therefore used a mixed-methods questionnaire to explore police perceptions of video recording rape complainant interviews for investigative and evidential purposes. In the questionnaire a series of open questions was used to explore officer's perceptions of the advantages and disadvantages of video recording the interview when compared to taking a written statement. It was also examined whether officers believed that one interview could meet both investigative and evidential requirements, a one size fits all approach. Officers rated a list of characteristics that included forensically relevant items (e.g., accuracy), interview items (e.g., question type), and complainant items known to affect credibility ratings (e.g., emotion). First they rated the list according to what provided the best information for investigations. They then rated the same list for what is the best evidence for a jury trial. Finally, one benefit of having access to the video recorded interview is that police are able to gauge response accuracy by reviewing the questioning and interview techniques used by the interviewer. Hence a between-subjects design was used to examine how questioning and interview format influenced officer ratings of a mock transcript for a rape complainant interview. Ratings of accuracy, credibility, and the likelihood they would charge the alleged offender were examined.

Statement of contribution to co-authored published paper

This chapter is a co-authored published paper. The bibliographic details of the published paper, including all authors, are:

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My contribution to the published paper involved:

The conception and design of the research project, data coding and analyses, writing and revising the article. Mark Kebbell was responsible for comment on the design of the study, statistical advice and assistance, and reviewing the article. Becky Milne was responsible for comment on the design of the study and reviewing the article.

(Signed)  _____

Nina Westera

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Supervisor and corresponding author of published paper: Mark Kebbell

Sex offences are difficult to prosecute, in part at least because evidence often consists only of accounts given by a complainant and a suspect (Lees, 2002). This difficulty is due to the circumstances of the criminal activity in that it is not usually committed in front of independent witnesses and often there is little or no other evidence. Even when objective evidence is available, such as DNA, it does not allow determination of the issue of consent and so may add little to a case when it comes to court (Edwards, 2003; Lees, 2002). As a consequence, enhancing the evidential sufficiency of a rape complainant's account both during the investigation and prosecution process may be one way of improving quality resolutions.

Given the importance of complainant testimony, the purpose of the current research was to explore video recording complainant interviews as one means of enhancing the quality of their evidence and the effective investigations and prosecutions of rape cases. Before proceeding to prosecution the police must first conduct an investigation to establish what, if any, offending has occurred and decide whether there is sufficient evidence to charge the alleged offender, or offenders (Kebbell & Wagstaff, 1997). A review of attrition studies conducted over the last 30 years in Australia, Canada, England and Wales, Scotland, and the United States, showed on average only 30% of rape cases reported to the police resulted in prosecution (Daly & Bouhours, 2009). Daly and Bouhours surmised that the main factors associated with cases proceeding through the prosecution process were evidence related.

The police in New Zealand, England, Wales and other countries are moving towards video recording rape complainant interviews in preference to the traditional method of preparing a written statement (Criminal Justice System, 2007; New Zealand Police, 2008). In doing so, the police are attempting to improve the quality of the information from rape complainants and reduce any trauma caused to them through the investigative process. Central to the justice system, the interview record forms the basis for investigative and prosecutorial decision making, and is used by the complainant as a memory refresher before giving evidence. Defence counsel also use the record to discredit the complainant by highlighting any inconsistencies with their oral evidence (Heaton-Armstrong & Wolchover, 1992). An incomplete and often inaccurate record of the interview has been shown to result from officers undertaking the cognitively demanding task of preparing a written statement (Köhnken, 1995; Köhnken, Thurer, & Zoberier, 1994; Lamb, Orbach, Sternberg, Hershkowitz, & Horowitz, 2000). Some

barristers, psychologists and linguists have criticised the police and the justice system for their over-reliance on statements that they argue are treated as a verbatim representation of a witness's account (Heaton-Armstrong & Wolchover, 1992; Milne & Shaw, 1999; Rock, 2001). Video recording interviews could alleviate some of these problems and enhance the completeness and accuracy of information from rape complainants. However, data are sparse concerning how video recording rape complainant interviews actually affect investigative and evidential practices.

Questioning as a gauge for accuracy

Video recording the interview potentially provides police officers with an additional investigative tool, the ability to make accuracy judgments based on how the information was elicited from the complainant. How questioning can influence the accuracy and amount of information recalled is well documented (e.g. Hutcheson, Baxter, Telfer, & Warden, 1995; Lipton, 1977; Loftus & Palmer, 1974). Milne and Bull (1999) described how different questioning types relate to the efficacy of investigative interviewing. They described open-ended questions as those that allow the respondent to give an unrestricted and detailed answer (e.g. "Tell me what happened..."). Considered the best type for gathering information, these types of questions tend to produce the greatest accuracy and quantity of information. Closed questions produce a narrower response of varying degrees, from one word (e.g. "What colour was his shirt?") to a phrase (e.g. "What was he wearing?"). Generally, the more open a question, the more accurate the response is likely to be (e.g., Hutcheson et al. 1995; Lipton, 1977). Open-ended questions allow the respondent to provide the information they know. In contrast, closed questions ask the respondent for information the questioner wants them to remember, thereby making the respondent susceptible to the demands of the questioner such as conformity and compliance (Kebbell & Wagstaff, 1999). Guess work may also play a part in the answer given to closed questions, thus potentially further reducing the accuracy of the information gained. Closed questioning is however considered appropriate when more information is required from the witness and attempting the use of open questions has failed (Milne & Bull, 1999).

Leading or suggestive questions imply the answer and hence are more likely to reduce the accuracy of the response even further (e.g. Clifford & Scott, 1978; Geiselman, Fisher, Cohen, Holland, & Surtes, 1986; Loftus & Palmer, 1974). The degree of suggestion in the question can vary from strongly leading (e.g. "the car was blue wasn't it?" – suggesting the car was blue) to more subtly leading (e.g. "how tall

was he?” – suggesting the person was tall). The reduced accuracy resulting from these types of questions mean they are considered inappropriate with both children and adults in most circumstances and are warned against in associated interviewing guidance documents (e.g. Criminal Justice System, 2007).

Research into whether questioning style affects judgments of witness accuracy and case outcome has primarily focused on mock juror assessments of child testimony. Some studies have found that the use of leading questions negatively influences credibility judgments about mock transcripts of child testimony (Castelli, Goodman, & Ghatti, 2005; Kalra & Heath, 1997), while a video simulated trial found no effects of question type (Schmidt and Brigham; 1996). Only one study compared the effects of questioning format on child and adult credibility judgments. Ruva and Bryant (2004) found that mock jurors who read a mock trial transcript rated six year olds as more credible when open-ended questions were used compared to closed-ended questions. No differences were found in credibility judgments when questioning was varied with 10 and 22 year olds, however this study did not include the use of leading questions. Together the research suggests that mock jurors may take questioning into account only to a limited extent when assessing witness credibility, and this relationship may be mediated by the age of the witness. No research that we are aware of however examines whether officers take questioning into account when making accuracy judgments. Given they are trained professionals working in this field, officers may have a greater awareness about the effects of different question types on accuracy and be more likely to use this as a gauge. If so, access to the video interview of the rape complaint may assist with effective investigative decision making.

Investigative interviewing methods

When the interview is video recorded, in an attempt to enhance the completeness of the complainant’s account without compromising on accuracy, the police in many countries use the cognitive interview (CI; e.g. England, Wales, New Zealand; Criminal Justice System, 2007; New Zealand Police, 2008). Originally developed by Fisher and Geiselman, the CI included four primary cognitive mnemonics in the form of instructions for the witness to reinstate context, report everything, recall events in a variety of orders and recall events from a different perspective (Fisher, Geiselman, & Amador, 1989; Fisher, Geiselman, Raymond, Jurkevich, & Warhaftig, 1987). Initial studies found the CI substantially enhanced recall when compared to standard police interviews (Geiselman, Fisher, MacKinnon & Holland, 1986). However, the standard

police interviews, which consisted of officers interviewing as they normally would, were found to contain poor communication skills like interrupting the witness and using inappropriate closed and leading questioning (Fisher, Geiselman & Raymond, 1987). The CI was therefore refined to include a structure to follow and effective communication skills such as building rapport, explaining the interview process and using appropriate questioning (see Fisher & Geiselman, 1992). Using witness-compatible questioning techniques, focused retrieval, and activating and probing an image, were new mnemonics also added. These refinements led to the development of a control 'structured interview', which contained the same effective communication skills as the CI minus the mnemonics (Köhnken et al., 1994). A meta-analysis of both the old and newer enhanced version of the CI showed similar accuracy rates to comparison standard and structured control interviews; 85% CI and 81% control (Köhnken, Milne, Memon, & Bull, 1999). The CI also elicited an average of 41% more correct details, an important increase in real life rape investigations that often have limited evidence.

Use of the video as evidence

A further benefit of video recording interviews is the recent introduction in some countries of the ability to use the interview of some adult witnesses as their evidence in chief during criminal proceedings (Criminal Justice System, 2007; Mahoney McDonald, Optican, & Tinsley, 2007). Using the video as evidence was originally introduced for child complainants to reduce the trauma of the process and to improve the quality of their evidence (see for example, Advisory Group on Video Recorded Evidence, 1989). Adult rape complainants are one group that is likely to meet the new criteria for this alternative way of evidence, allowing for the previously discussed benefits to the investigator of using the video interview to extend to the courtroom. In addition, using the video as evidence will allow the jury to view the complainant's account as made more contemporaneous to the time of offending rather than at trial months and sometimes years after the police interview. Thereby, improving the quality of the evidence by reducing the effects of forgetting (see Baddeley, Eysenck, & Anderson, 2009), and the susceptibility of memory recall to distortion from other sources such as the media (e.g. Crombag, Wagenaar & van Koppen, 1996; Loftus & Banaji, 1989), or co-witnesses (e.g. Gabbert, Memon, & Allen, 2003; French, Garry, & Kazuo, 2008).

Two main issues arise from using an investigative interview as evidence. Firstly, during the investigation phase the purpose of the interview is to elicit as much accurate and complete information as possible. Attributing values to this information occurs later

in the context of the whole investigation (Criminal Justice System, 20007; New Zealand Police, 2008). In contrast, rules of evidence determine the admissibility of the information provided by the witness (e.g. Mahoney et al., 2007). Thus, a video recorded investigative interview may include information not directly relevant to proceedings that, with the oral system of evidence, was previously filtered out through the pre-trial briefing of the witness and strategic questioning by the prosecutor. Using a video record produced during the investigation as evidence reduces the ability to manage this type of information and may capture information deemed inadmissible by the courts, a situation that the additional information generated by the CI may exaggerate.

Secondly, not much is known about the effectiveness of using video recorded CI's as evidence. Well established doctrine amongst prosecutors is that the effectiveness of the evidence is determined by how it presents to a jury, so accuracy and completeness may mean very little if the evidence is low in persuasive power (Danet, 1980; Evans, 1994). This tension is highlighted with concerns expressed by the judiciary and prosecutors about the ability of police interviews, which typically follow the CI format, to serve as effective evidence (Criminal Justice Joint Inspection, 2009; Stern, 2010). Notably, the length of the interview, lack of focus and clarity, inability of interviewers to highlight aspects of the evidence, and inclusion of the explanation of the interview process have been cited as obstacles. However, to our knowledge no research has examined officer perceptions as to whether video recorded interviews with rape complainants can meet both investigative and evidential purposes or if the dual nature of the interview influences officers' perceptions of how they should interview. Gaining an understanding of these issues is important because the decision to interview on video rests with officers and these perceptions may affect the format of the interview.

In sum, the purpose of this research was to explore officer perceptions of using video recorded interviews of adult rape complainants for investigative and evidential purposes. Our primary research questions were: (1) do officers take question and interview format into account when making judgments about complainant accuracy, credibility, and decisions to charge? (2) what are perceptions of officers about the advantages and disadvantages of video recording interviews? and (3) do perceptions of officers on what represents effective practice for investigations differ from those that provide the best evidence for a jury trial?

Method

Participants

Officers from the New Zealand Police who are involved in the investigation of adult sexual assault cases were invited to participate anonymously via email containing an electronic link to the questionnaire³. All specialist interviewers in the police, who conduct video interviews with adult witnesses using the CI were identified from national records and invited to participate ($N=93$). As were a random selection of investigators ($N=144$) and supervisors ($N=144$) identified through contact persons in each sub-area of the police as being involved in adult sexual assault investigations. Participants were able to respond during work hours and were given four weeks to complete the questionnaire. The response rate for the three hundred and eighty one officers who were invited to participate was 35.7% ($N=136$). Not all respondents completed all sections of the questionnaire hence the reported N varies depending on how many respondents completed the relevant items.

The mean age of those who completed all the demographics section of the questionnaire ($N=87$) was 42.2 years ($SD=6.3$) and length of service ranged from 6 to 34 years ($M=17.0$ years, $SD=6.5$); 66 were male (76.7%), 20 were female (23.3%) and one did not complete this item. Investigators consisted of 41.4% of the respondents ($N=36$), followed by supervisors, 32.2% ($N=28$), and specialist interviewers, 26.4% ($N=23$). In total 80.5% reported to have received some form of investigative interview training.

Questionnaire

A quasi-experimental questionnaire was developed and refined after being piloted on nine police officers. The questionnaire took about 45 minutes to complete. The first section used a between-subjects experimental design to assess participant's perceptions of the effectiveness of different questioning styles and interview format for an adult rape complainant interview. Participants were asked to rate a mock adult rape investigative case⁴. The case included background information outlining a rape by an acquaintance at a party where the alleged offender claimed the sex was consensual and there was no other corroborating evidence. Transcript excerpts for a complainant's video interview derived from actual cases were prepared in three conditions based on

³ Griffith University Human Research Ethics Committee granted ethical clearance for this study and the research was conducted in accordance with the protocol granted. Refer to protocol reference number: PSY/61/09/HREC.

⁴Copies of the interview conditions and questionnaire are attached in Appendix C and D respectively.

the definitions created by Köhnken et al. (1994): (i) standard interview, (ii) structured interview, and (iii) cognitive interview. Participants from each group (investigator, supervisor and specialist interviewer) were randomly assigned to each condition but response rate was not equal across conditions (standard $N=52$, structured $N=43$, cognitive $N=41$).

The account provided by the complainant was the same across all conditions but the interviewing format was manipulated. Each condition contained three excerpts – an initial account, a description of the offender, and a description of the sexual offending. The standard interview format used inappropriate closed and leading questions throughout as has been reported as occurring in traditional police interviews (refer to Köhnken et al, 1994). The structured interview used an open question to elicit a free narrative for the initial account and used primarily open and some appropriate closed questions for the description of the offender and offending. The CI condition was identical to the structured condition with the addition of cognitive mnemonics in the interviewer's text, which were report everything, context reinstatement and focused retrieval (mnemonics were used as described in Milne, 2004).

After each excerpt participants rated their perceived accuracy of the information and the credibility of the complainant based on all the information they had received using a nine point Likert scale (1='not' accurate/credible; 9='very' accurate/credible). After the final excerpt, participants were also asked to rate the likelihood that the alleged offender actually committed the offence and whether they would charge the alleged offender. In addition, they were asked to rate, if the visual recording of the interview was played at a trial, how they believe a jury would perceive the accuracy and the credibility of the complainant, the likelihood a jury would convict the alleged offender, and the realism of the scenario.

The second section of the questionnaire used open questions to examine participant's perceptions of the advantages and disadvantages to investigations of video recording interviews as compared to producing a written statement⁵. One researcher coded the responses to all the open questions and another researcher coded a random selection of 10% of all responses. Disagreements in coding were discussed and resolved. A Cohen's Kappa test found inter-rater reliability high and statistically significant ($K=.84$; $p<.001$)

⁵For ease of reading corrections were made to minor spelling mistakes and typos in the responses.

The third section contained a 56 item, 7 point Likert scale where participants were asked to rate a list of characteristics of a complainant's account according to what provided the best information for investigations (1='strongly disagree', 4='neutral'; 7='strongly agree'). The characteristics included forensically relevant characteristics (e.g. accuracy, completeness, detail), interview characteristics (e.g. different types of questioning and interview techniques; derived from Milne, 2004), and complainant characteristics known to affect credibility ratings (e.g. inconsistent, emotional; derived from Memon, Vrij & Bull, 2003). The same list of characteristics were then used for participants to rate the best evidence for a jury trial. Finally, demographic details were obtained.

Results

First we examined whether officers take questioning and interview format into account when making judgments about complainant accuracy, credibility, and decisions to charge. Pearson's correlations for each transcript excerpt indicated that perceived accuracy of information and credibility of the complainant were highly and significantly related (initial account, $r(141)=.63$, $p<.001$; offender description, $r(138)=.60$, $p<.001$; and, action description $r(136)=.71$, $p<.001$). Nor were any significant differences found between investigators, supervisors and interviewers ratings of accuracy by condition ($F(2,78) = 0.42$, $p<.05$). For these reasons only accuracy ratings for all participants as one group are reported. On average participants rated the realism of the scenario on a 9-point Likert scale as $M = 6.87$ ($SD=2.22$) indicating they found the scenario reasonably realistic.

Interview condition and type of information

A 3 X 3 ANOVA (standard/structured/cognitive interview X initial account/offender description/action description) with repeated measures on the second factor was conducted on participants' ratings of the complainants' accuracy. These data are displayed in Table 2.1. There was a significant main effect of interview condition, $F(2,133) = 28.71$, $p < .001$, $\eta^2=.30$. Follow up t -tests ($p<.05$) indicate that the complainant was perceived to be less accurate in the standard condition ($M = 3.96$, $SD = 1.43$) than either the structured or cognitive interview conditions which did not differ from one-another ($M = 6.05$, $SD = 1.50$ and $M = 5.81$, $SD = 1.52$ respectively). There was also a significant main effect of information type, $F(2,266) = 25.62$, $p < .001$, $\eta^2=.16$. Follow up t -tests ($p<.05$) indicate that the initial account ($M = 5.54$, $SD = 2.00$)

was perceived to be as accurate as the action description ($M = 5.42$, $SD = 2.12$) and both were perceived to be more accurate than the offender description ($M = 4.56$, $SD = 2.09$).

The interview condition by interview type interaction was also significant, $F(4,266) = 16.22$, $p < .001$, $\eta^2 = .20$. Follow up t -tests ($p < .05$) indicated that there were no differences between interview conditions concerning the perceived accuracy of the initial account, however, the perceived accuracy of the offender and action description, for both the structured and cognitive interview conditions were higher than the standard condition. The difference between the structured and cognitive interview were not significant for either the offender or action description.

Table 2.1

Means and standard deviations for interview condition broken down into type of information provided.

		Standard	Structured	Cognitive
Initial account	M	5.33	5.93	5.41
	SD	(2.04)	(1.98)	(1.96)
Offender description	M	2.87	5.53	5.68
	SD	(1.41)	(1.82)	(1.62)
Action description	M	3.67	6.67	6.32
	SD	(1.63)	(1.58)	(1.64)

Interview condition, guilt and case outcome

A 3 X 3 ANOVA (standard/structured/cognitive interview X committed offence/charged/convicted) with repeated measures on the second factor was conducted on participants' ratings of the alleged offenders guilt and case outcome. These data are displayed in Table 2.2. There was a significant main effect of interview condition, $F(2,131) = 4.70$, $p < .05$, $\eta^2 = .07$. Follow up t -tests ($p < .05$) on cumulative scores indicate that the alleged offender was perceived as being less likely to have committed the offence, to be charged and convicted in the standard interview ($M = 3.80$, $SD = 1.29$) than in the structured ($M = 4.56$, $SD = 1.35$) and cognitive interview condition ($M = 4.53$, $SD = 1.48$), which did not differ from each other.

There was also a significant main effect of guilt and case outcome, $F(2,262) = 160.58$, $p < .001$, $\eta^2 = .55$. Follow up t -tests ($p < .05$) across all conditions indicate that

the alleged offender was more likely to be perceived as having committed the offence ($M = 5.80$, $SD = 1.66$) than for charges to be laid ($M = 4.34$, $SD = 2.24$) and as even less likely to be convicted by a jury ($M = 2.64$, $SD = 1.54$). The interaction was not significant, $F(4,262) = 1.53$, $p < .05$.

Table 2.2

Means and standard deviations for interview condition broken down into participants' judgments on likelihood the alleged offender committed the offence and case outcome.

		Standard	Structured	Cognitive
Guilty	<i>M</i>	5.49	6.05	5.93
	<i>SD</i>	(1.67)	(1.69)	(1.60)
Charged	<i>M</i>	3.61	4.65	4.95
	<i>SD</i>	(2.11)	(2.08)	(2.35)
Convicted	<i>M</i>	2.29	2.98	2.73
	<i>SD</i>	(1.39)	(1.49)	(1.71)

Advantages and disadvantages to investigations

Next, we used a series of open questions to examine officer's perceptions of the advantages and disadvantages to investigations of video recording an adult sexual assault complainant's interview compared to taking a written statement. The most frequently perceived advantage was categorised as 'enhances forensic quality' (94.4% of all responses) which included recording the exact words of the complainant and interviewer, and non-verbal communication. For example:

It captures all the information that is available, written evidence will lose lots of periphery details which are sometimes crucial to the case. It presents the victim as she was at the time of the video and often soon after the event rather than 18 to 24 months after. It can show the trauma and distress suffered and all this should be part of the evidence. Any inaccuracies can be shown clearly as honest errors; nothing can be hidden by inappropriate police procedure and the process is open to scrutiny and auditing.

Increased accuracy and detail, and more information were also frequently cited in this category, as well as a reduction in interviewer influence:

I believe a more detailed account is most likely to result from a visually recorded interview and this method provides the best option to establish all available facts and evidence. It gives the best

opportunity to prevent the interviewer's interpretation of the complainant's account being recorded.

Video recording the interview was also perceived as an 'improved interviewing process' (34.7%) than taking a written statement. Comments suggested this was mainly due to the ability to allow the interviewee to provide an uninterrupted free narrative account:

Reduce time taken to take written statement. Allows complainant to give free account without interruption and reduces the amount of repetition that occurs with written statements.

Other advantages were 'can be used as good evidence' (33.9%):

It can help to show the degree of difficulty for the complainant to speak about the incident and thus demonstrate the impact and effect of the incident to its true degree. Most importantly is its ability to be used as evidence in chief... thus not requiring the victim to be put through the embarrassment and trauma of repeated intimate detail and effectively being asked to re-live the offending against them in what can only be seen by them as an open forum

And 'allows for effective review' (30.6%):

...the entire account provided by the complainant is available to the investigator including the emphasis placed on various parts of the testimony...

Other categories included 'time efficient' (27.4%), and 'better for the complainant' (25.0%) in terms of the interview process and ability to use the video as evidence:

...Creates a friendlier environment that allows the complainant to talk more freely about what has occurred... Speeds up the process for the complainant as she/he is no longer required to be interviewed for lengthy periods...

'Miscellaneous' accounted for 4.0% of responses.

The highest reported perceived disadvantage of video recording interviews for investigations was categorised as 'resource intensive' (49.2%). Comments in this category focused on the availability of transcription services, and skilled interviewers and interview monitors. The next highest scoring category concerned the interview being 'difficult to review' (42.7%), for example:

...The extra time to review a victim's statement, as it is by practice always longer and more detailed than a written one. Longer to find the required details of what an investigator needs to head off on a specific enquiry line. Unless transcribed, multiple viewings of the statement likely to be required depending on the monitors notes. The double up of staff time in having a monitor and an interviewer during each visually recorded interview.

Another perceived disadvantage was that the record is 'not good evidence' (27.4%), responses in this category included that the complainant may not present well to the jury, especially if they behave contrary to juror expectations. Also that the video 'captures everything' (25.8%) including irrelevant and inadmissible information:

If the complainant has a difficult personality it can put the jury off of him/her. Equally if the complainant is quite a strong and composed individual it can make them seem less credible as I believe juries expect victims of sexual assaults to be quivering wrecks.

They are generally long interviews with lots of information. Some of which is inadmissible in court (hearsay, opinion, etc) or not relevant.

‘Risk of distribution’ of the video record was another concern (11.3%). Other responses included ‘not good for the complainant’ and ‘none’ (4.8%), and ‘miscellaneous’ (6.5%).

Characteristics of interviewing for investigations and evidence

Finally, we explored officer’s perceptions on what represents effective practice for investigations and what provides the best evidence for a jury trial. A series of seven-point Likert scales were used to measure officer’s perceptions of the ideal characteristics of the account given by an adult sexual assault complainant during a video recorded interview. Participants were firstly asked to rate the 56 characteristics of the best information for investigative purposes and then, using the same scale, were asked to rate the characteristics if the video recording was used as evidence in chief at a jury trial (1= ‘strongly agree’, 4= ‘neutral’ and 7= ‘strongly agree’). The rankings, means and standard deviations for all the characteristics that were examined are in Table 2.3. A Kendall correlation of concordance for these data showed officers were consistent in their ranking of characteristics (investigations Kendall’s $W = .44$, evidence Kendall’s $W = .41$, $p < .001$).

The mean ratings for the 56 characteristics were ranked separately for investigative and evidential scales from strongly agree to strongly disagree. The five characteristics ranked as most desirable for investigations were ‘be as accurate a possible’, ‘be probed for more detail about evidentially important topics’, ‘have the complainant do most of the talking’, ‘include the interviewer using pauses and silence to give the complainant time to think’, and ‘be primarily elicited through open questions’. The first two characteristics for evidence were the same as for investigations and the next three were similar: ‘contain primarily free narrative responses to questions’, ‘have the complainant do most of the talking’, and ‘be as complete as possible’. Rankings for the least desirable characteristics were the same for both investigations and evidence from least desirable were: ‘be primarily elicited through leading questions’, ‘be primarily elicited through closed questions’, ‘be elicited using a traditional police interview’, ‘contain primarily short and direct responses to questions’ and ‘only contain information directly relevant to the alleged offence’.

The CI was the preferred method for both use in investigations and as evidence (investigations: *Rank* = 12, *M* = 6.18, *SD* = 1.04; evidence: *Rank*=14, *M* = 6.04, *SD* = 1.04), followed by the structured interview (investigations: *Rank*=33, *M* = 5.32, *SD* = 1.64; evidence: *Rank*=30, *M* = 5.40, *SD* = 1.59) and a traditional police interview (*Rank*= 54, investigations: *M* = 1.94, *SD* = 1.41, evidence: *M* = 2.19, *SD* = 1.35).

A comparison of ratings of the characteristics for the best information for investigations with the characteristics of best evidence for a jury trial was conducted using *t*-tests with a Bonferroni correction produced some significant differences ($p < .0009$ with the Bonferroni correction applied). When compared to interviews for evidence significantly higher ratings were given to interviews for investigative purposes for ‘include partial memories’, ‘include an explanation of the interview process’ and ‘include the interviewer building rapport with the complainant’. Characteristics seen as significantly less important to investigative interviews than evidential interviews were: ‘only contain information directly relevant to the alleged offence’, ‘be in a chronological order’, ‘be emotional’, and ‘be in a logical order’.

Table 2.3

Rankings, means and standard deviations for the best characteristics of the complainant’s account when used for investigative or evidential purposes.

Characteristic	Investigations			Prosecutions		
	<i>Rank</i>	<i>M</i>	<i>SD</i>	<i>Rank</i>	<i>M</i>	<i>SD</i>
Be as accurate as possible	1	6.47	.86	1	6.42	.92
Be probed for more detail about evidentially important topics e.g. ‘tell me more about that...’	2	6.41	.78	2	6.36	.89
Have the complainant doing most of the talking	3	6.41	.84	4	6.34	.89
Include the interviewer using pauses and silence to give the complainant time to think	4	6.38	.86	6	6.23	1.10
Be primarily elicited using open questions (questions that elicit a wide answer – more than a few words) e.g. ‘describe him to me...’	5	6.38	1.10	7	6.22	1.05
Be as complete as possible	6	6.37	.86	5	6.29	.87
Be given in the complainant’s own time	7	6.30	.88	11	6.07	1.06

Contain a high level of detail about information central to the alleged offence	8	6.29	1.00	9	6.09	1.01
Contain primarily free narrative responses to the questions	9	6.29	.88	3	6.34	.86
Include the complainant being asked to report everything they know	10	6.21	1.12	12	6.06	1.09
Include an explanation of the interview process	11	6.20	1.05	22	5.66	1.33
Be elicited using the enhanced cognitive interview	12	6.18	1.04	14	6.04	1.04
Be coherent	13	6.17	1.00	15	6.01	.98
Contain peripheral information that can be corroborated by other witnesses	14	6.02	.98	18	5.94	1.18
Include partial memories	15	5.93	1.13	33	5.35	1.42
Be clearly communicated	16	5.92	.99	8	6.15	.96
Not be interrupted	17	5.92	1.19	19	5.92	1.18
Include information that may seem trivial or unimportant to the complainant	18	5.87	1.35	31	5.38	1.36
Include the complainant being asked not to guess or fill in any gaps in memory	19	5.83	1.62	17	5.97	1.16
Be easily understood	20	5.82	1.18	13	6.05	.99
Appear to be accurate	21	5.82	1.20	10	6.08	1.04
Be elicited through simply worded questions	22	5.82	1.22	16	6.00	1.14
Be ordered according to the complainant's recall	23	5.72	1.36	29	5.42	1.38
Contain information that is peripheral to the alleged offence but helps the complainant remember	24	5.69	1.13	32	5.35	1.22
Be elicited in a manner dependant on the characteristics of the complainant	25	5.67	1.04	25	5.64	1.09
Be elicited when the complainant is concentrating hard	26	5.58	1.32	28	5.47	1.43
Emphasise evidentially important points	27	5.58	1.27	20	5.87	1.07

Include the drawing of a sketch plan of the scene by the complainant	28	5.54	1.22	26	5.60	1.16
Include the interviewer building rapport with the complainant	29	5.49	1.66	39	4.98	1.74
Address inconsistencies within and between the complainant's accounts	30	5.48	1.46	23	5.65	1.42
Address any issues that may later be used to discredit the complainant	31	5.47	1.34	21	5.79	1.24
Cover all avenues of the investigation	32	5.36	1.24	38	5.03	1.33
Be elicited using a structured interview (using open and then closed questions)	33	5.32	1.63	30	5.40	1.59
Tell a story	34	5.26	1.36	24	5.65	1.24
Be given near to the time of the alleged offence	35	5.26	1.41	27	5.49	1.27
Cover evidentially important topics more than once	36	5.12	1.36	34	5.16	1.29
Contain no ambiguities	37	4.97	1.46	37	5.05	1.61
Be elicited after they have been asked to concentrate hard	38	4.96	1.64	36	5.09	1.52
Include memories they are not confident in	39	4.77	1.59	44	4.67	1.61
Contain a high level of detail about information peripheral to the alleged offence (i.e. information not directly relevant to the charges)	40	4.75	1.52	45	4.43	1.61
Be provided in a confident manner	41	4.63	1.45	35	5.15	1.30
Be concise	42	4.47	1.99	40	4.96	1.73
Be elicited in a variety of orders e.g. forwards and backwards	43	4.40	1.51	49	4.02	1.56
Contain verbal hesitations, verbal hedges and false starts in speech e.g. 'Um...', 'I think..', 'I...he...'	44	4.37	1.55	48	4.15	1.71
Be emotional	45	4.36	1.33	42	4.75	1.13
Contain no inconsistencies within the account	46	4.33	1.59	43	4.75	1.66

Be in a logical order	47	4.21	1.60	41	4.87	1.63
Be elicited after giving them mental cues about the physical and emotional context	48	4.12	1.69	47	4.34	1.60
Be given from a variety of perspectives e.g. from the complainant's own viewpoint and the viewpoint of the offender	49	3.89	1.64	51	3.86	1.66
Cover evidentially important topics first	50	3.68	1.78	50	3.89	1.61
Be in chronological order	51	3.49	1.84	46	4.39	1.67
Only contain information directly relevant to the alleged offence	52	2.81	1.45	52	3.62	1.54
Contain primarily short and direct responses to the questions	53	2.50	1.39	53	2.97	1.62
Be elicited using a traditional police interview (using direct short answer questions)	54	1.94	1.41	54	2.19	1.35
Be primarily elicited using closed questions (questions that elicit a few words to answer) e.g. 'what colour was his shirt?'	55	1.86	1.32	55	2.11	1.38
Be primarily elicited using leading questions (questions that imply the answer) e.g. 'was he wearing a brown shirt?'	56	1.39	1.03	56	1.72	1.18

Discussion

The first aim was to examine whether officers make full use of the video record by using questioning as a gauge for accuracy of rape complainant testimony. We found that questioning style affected officer's accuracy and credibility judgments of an adult rape complainant interview. Officers rated the complainant as less accurate, less credible and that they were less likely to charge the alleged offender when questioning was leading compared to open. These findings suggest officers are correctly judging how certain types of questions can negatively affect the actual accuracy of the response provided (e.g. Loftus & Palmer, 1974). Officers may think that leading questions negatively affect the complainant's memory recall or that the complainant is simply complying to the interviewer's demand characteristics.

The use of appropriate questioning techniques in the structured and cognitive interview also resulted in officers perceiving the complainant's report as being more likely to convict the alleged offender. This finding is meaningful because officers may base decisions to charge on the likelihood of conviction. As previously discussed, research suggests jurors place a limited weight on questioning when making judgments about children's testimony. The relevance of research into how questioning affects juror perceptions of adult testimony will increase with access to the video record. Bearing in mind of course the jury will never see the interview if the questioning is so poor that the judge deems it inadmissible.

Ironically, despite the current findings, even after training police interviewers of witnesses tend to use closed and leading questioning frequently (see Powell, Fisher, & Wright, 2005 for a review). Further, Lamb et al. (2000) found that child interviewers systematically misattributed responses as resulting from open rather than more focused questions. Together the findings suggest that interviewers are able to recognise poor interviewing in others but may lack insight into their own questioning behaviour (see Wright & Powell, 2006). Alternatively, officers may deliberately adopt closed questioning as a tactic to manage the amount and content of information elicited from the witness despite an awareness of possible accuracy degradation (Griffiths & Milne *in press*; Shepherd & Milne, 2006, Wright & Powell, 2006). Nevertheless, video recording the interview allows for the effective review of these behaviours that was not previously possible. Exactly how the ability to review questioning affects prosecutorial outcomes requires further exploration, but the inability to do so is likely to negatively affect justice outcomes, by limiting effective investigative, prosecutorial, and jury decision making. The current findings suggest with the move towards video recording, the quality interviewing of adult rape complainants is one means of reducing attrition when officers make decisions about prosecution.

We found that the presence of the CI mnemonics did not affect officer's attributions of accuracy. This finding is consistent with research suggesting the CI increases the quantity of information, without affecting actual accuracy (see Köhnken et al., 1999). Although controlled for in this experiment, mock jurors have been shown to use detail as an indicator of accuracy (e.g. Bell & Loftus, 1988, 1989). How the additional detail generated by the CI affects juror judgments is a potential area for future research. For ecological validity, further research should also explore whether the effects found in this experiment generalise to judgments of actual video recorded

interviews, and how questioning interacts with and weighs against other evidential factors (e.g. age, vulnerability of the witness; nature of the offence).

Officer's perceptions of the advantages and disadvantages to investigations of video recording interviews compared to preparing a written statement suggest video interviewing may be a legitimate means of improving the quality and quantity of information from rape complainants. Firstly, nearly all officers cited the method of video recording improved the forensic quality of the interview record such as accuracy, completeness and capturing both everything said and non-verbal communication. Secondly, officers saw video recording the interview as being more conducive to interviewing practices known to enhance the completeness and accuracy of the information provided (e.g. encouraging free narratives, not interrupting or using repeated questioning; see Fisher & Geiselman, 1992). Officer's comments suggest they may adopt poor interviewing behaviours in the written statement process to manage the flow of information. Further, not only was there the perception of improved quality, but officers reported that they could more effectively review video recorded interviews. These findings suggest that officers perceive the theoretical benefits of video recording the interview to be realized practice. Video interviewing therefore provides an opportunity for improving investigative practices and decision making, and in doing so, may enhance effective resolutions in rape cases.

Such corresponding opinions as to the benefits, raises questions about the disadvantages of video recording the interview. Interestingly, many of the benefits were also perceived by officers as disadvantages. While the video record allowed for effective review, reviewing the interview was more difficult. Time efficiencies during the interview process were tempered with concerns over the resource intensiveness of the overall process. It appears that the payoff for improved rape investigations is the extra demand on resources, however this investment should be weighed against the possibility of more effective decision making and better outcomes for justice.

Finally, we explored officer perceptions as to whether one interview can meet both investigative and evidential purposes. Over a third of officers volunteered that an advantage to video recording the interview was the ability to use it as good evidence. In addition, only a few minor differences were found between officers' perceptions of what characteristics of the complainant's account within a video interview provided the best information for investigations, and what characteristics provided for the best evidence in court. These findings suggest that whether fact-finder decision making also

benefits from viewing the complainant's video interview is worthy of further exploration.

Matching concerns previously expressed by prosecutors and the judiciary, officers cited potential disadvantages of using the video as evidence as capturing irrelevant and inadmissible information, and being in a format not easily digestible to a jury (e.g. Criminal Justice Joint Inspection, 2009). Officer's ratings of the ideal characteristics for investigation and evidence support this finding, with evidence receiving higher ratings for being chronological and logical order, and containing only information directly relevant to the alleged offence. These characteristics are associated with the jury receiving a meaningful narrative that they can relate to (e.g. Evans, 1995). Concerns about presentation may be symptomatic of the CI format encouraging detailed recall in long free narratives ordered according to the complainant's own memory representation (see Fisher & Geiselman, 1992).

Officers also expressed concern about how the complainant presents during interview, especially whether their non-verbal behaviour such as emotion appears credible to a jury. Reflecting research findings that congruence of rape complainant behaviour with juror expectations enhances credibility, officers rated emotion as more important for evidence than for investigations (Dahl, Enemo, Drevland, Wessel, Eilertsen, & Magnussen, 2007; Kaufmann, Drevland, Overskeid, & Magnussen, 2003). Such concerns may not be unique to using the video interview as evidence, however expectations about rape complainant behaviour may differ from the relaxed environment of the interview room contemporaneous to the offending to when giving evidence some time later in the formal court environment.

Editing the interview could easily alleviate some of the disadvantages identified by officers. Others, regarding how the video interview presents as evidence are more complex and require further exploration. The risk of using video interviews as evidence is that quality of complainant recall may mean very little to enhancing quality resolutions in rape cases if the evidence is not persuasive to a jury. However, together these findings provide some promise that one interview can meet both investigative and evidential purposes.

Improving the likelihood of conviction is only one type of effective resolution, Jordan (2004) argues that assisting rape survivor's recovery by making them feeling believed and supported is another. Importantly, we found that officers saw video recording the interview as a better process for complainants than taking a written

statement for two main reasons. Firstly, the interviewing process was more complainant focused due to the more relaxed environment, witness-centred approach and reduction in repetitive questioning and interruptions. Secondly, the ability to use the video as evidence was thought to result in possible reduction in trauma during the court process. This finding is supported by research suggesting that most vulnerable adult witnesses would like the option of using this method (Burton, Evans, & Sanders, 2006; Hamlyn, Phelps, Turtle, & Sattar, 2004). Improving the process for complainants is also potentially another means of reducing attrition and increasing reporting in rape cases.

Achieving best evidence requires many things, not least the commitment of investigating officers. This paper shows that officers have such an understanding of the rationale of how to improve the quality of complainant testimony. Officers perceive that video recording rape complainant interviews has many benefits for investigations, in terms of both forensic quality and improving the process for complainants, and that these benefits may extend to the prosecutorial process. The perceived disadvantages are not insurmountable and can mostly be realized with proper resourcing and education. The on-going challenge is to manage the extra information produced and meet or change evidential requirements of relevancy and admissibility.

Chapter 3: It is better, but does it look better? Prosecutor perceptions of using rape complainant investigative interviews as evidence

When police do video record the interview, it is for prosecutors to decide whether to apply to use the video as the complainant's pre-recorded evidence. Also, if prosecutors perceive the video enhances the quality of the complainant's testimony, they may be more likely to proceed with the prosecution. Despite this important role, no systematic research has examined prosecutor perceptions of using this method with adult rape complainants. The study in the Fourth Chapter therefore replicates that in the Third Chapter using a mixed-methods questionnaire to explore prosecutor perceptions of using the video recorded investigative interview of rape complainants for investigative and evidential purposes. Again, the first part of the questionnaire uses a between-subjects design to examine whether questioning and interview format influences prosecutor ratings of a mock transcript of a rape complainant interview. Ratings of accuracy, credibility and the likelihood they would recommend police charge the alleged offender were obtained. The second part of the questionnaire used a series of open questions to explore prosecutor perceptions of the advantages and disadvantages of using the video recorded police interview as evidence. It was also examined whether prosecutors believed that one interview could meet both investigative and evidential purposes. An identical list of characteristics to that used with the police were rated according to what provided the best information for investigations followed by rating the same list for what is the best evidence for a jury trial.

Statement of contribution to co-authored published paper

This chapter is a co-authored paper accepted for publication subject to acceptable amendments. The bibliographic details of the submitted paper, including all authors, are:

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My contribution to the submitted paper involved:

The conception and design of the research project, data coding and analyses, writing and revising the article. Mark Kebbell was responsible for comment on the design of the study, statistical advice and assistance, and reviewing the article. Becky Milne was responsible for comment on the design of the study and reviewing the article.

(Signed)  _____

Nina Westera

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Supervisor and corresponding author of submitted paper: Mark Kebbell

An extensive body of research has examined how extra-legal factors such as stereotypes and displayed emotion profoundly biases rape complainant credibility judgments (e.g. Dahl, et al., 2007; Estrich, 1996; Tempkin & Krahé, 2008). In this study, however, a novel approach is taken by exploring prosecutor perceptions about using video recorded investigative interviews as evidence to enhance the quality of the information provided by this special type of eyewitness. Notwithstanding the recent ability to use the interview as an alternative way of evidence, the police in many countries now video record investigative interviews of adult rape complainants (e.g. England, Wales, New Zealand; Criminal Justice System, 2007; New Zealand Police, 2008). Police prefer this method to the officer producing a written statement based on the witness's account (Westera, Kebbell, & Milne, 2011a), a process that is prone to bias and has been shown to result in an incomplete and inaccurate interview record (Köhnken, Thurer, & Zoberier, 1994; Lamb, Orbach, Sternberg, Hershkowitz, & Horowitz, 2000). The video recording of this interview also means it can later be used as evidence allowing decision-makers to view the complainants account as made closer to the reported events than at a trial held months or years later. The negative effects of delay on memory are well documented (see Read & Connelly, 2007). Firstly, forgetting decreases the completeness of memory recall over time potentially compromising the ability of the witness's account to prove the facts (e.g. Ebbinghaus, 1913; Rubin & Wenzel, 1996). This is especially the case with detail and information not central to events that is often the subject of cross-examination (Davies, Wilson, Mitchell, & Milson, 1995). Secondly, the opportunity for exposure to misinformation and other memory recall distortions such as being influenced by co-witnesses or taking on a closer script narrative increases (e.g. Gabbert, Memon, & Allen, 2003; Greenberg, Westcott, & Bailey, 1998; Loftus & Banaji, 1989).

Another potential benefit of pre-recorded evidence is that police practice in a number of countries is to use the cognitive interview (CI), which means the jury is likely to receive even more information from the complainant (Criminal Justice System, 2007; Köhnken, Milne, Memon, & Bull, 1999; New Zealand Police, 2008). The CI uses memory retrieval techniques such as instructions for the witness to reinstate context and report everything to increase the amount of information recalled (Fisher & Geiselman, 1992). Recalling events in a variety of orders and from a different perspective are other CI mnemonics, but are seldom used in practice (e.g. Dando, Wilcock & Milne, 2009;

Kebbell, Milne & Wagstaff, 1999). When initial testing found police tended to dominate the interview and use closed and leading questions, the CI was refined to also include social and communication skills (Fisher & Geiselman, 1992; Fisher, Geiselman & Raymond, 1987). The CI adopts a witness-centric approach where the witness is encouraged to actively search their memory and recall information in their own order and at their own pace. A meta-analysis of both the old and newer enhanced version of the CI showed similar accuracy rates with control interviews; 85% CI and 81% control (Köhnken et al., 1999; see Memon, Meissner, & Fraser, 2010 for a recent meta-analysis). Importantly for rape prosecutions, which often have limited evidence (Edwards, 2003; Konradi, 1997), an average 41% more details were elicited in the CI conditions.

Access to the video recorded interview also means decision-makers can scrutinize how the complainant was originally questioned, which potentially has a powerful influence on information accuracy (Powell, Fisher & Wright, 2005; Milne & Bull, 1999). The CI and other empirically supported investigative interviewing protocols consider open questions the best type of questions for both accuracy and quantity of information (see Milne & Bull, 1999). By encouraging elaborate memory retrieval these types of questions allow the respondent to give an unrestricted and detailed answer (e.g. “Tell me what happened”, Hutcheson et al. 1995; Lipton, 1977). Closed questions encourage short responses by asking the respondent for information the questioner wants them to remember (e.g. “what colour was the car?”). These types of questions can result in reduced accuracy due to the respondent’s susceptibility to the social demands of the questioner, such as conformity and compliance, and should only be used when open questions are exhausted (Kebbell & Wagstaff, 1999, Milne & Bull, 1999). Leading or suggestive questions imply the answer and hence are more likely to reduce response accuracy even further (e.g. “the car was blue wasn’t it?”; Clifford & Scott, 1978; Loftus & Palmer, 1974). These types of questions are therefore considered inappropriate in most circumstances and are warned against in associated interviewing protocols.

Clearly there are many expected benefits to the quality of testimony when using an investigative interview as evidence. Pragmatically, however successful prosecutions in the adversarial justice system depend on perceived rather than actual accuracy. The potential benefits of using pre-recorded evidence may therefore be lost if the video is less credible and persuasive to a jury than live testimony. Recent reviews of special

measures for vulnerable adults in England and Wales, suggest prosecutors and judges attribute the slow uptake of pre-recorded evidence to the unsuitability of police interviews as evidence (Criminal Justice Joint Inspection, 2009; Stern, 2010). In particular, police practices were criticized for detracting from the content of the evidence by generating interviews that are unduly long, and lack focus and clarity. Unfortunately it was beyond the scope of these reviews to systematically examine these concerns, which were ascribed to poor interviewing practices. Another possible cause of these concerns is a conflict between the CI format and prosecutor expectations about how credible testimony is elicited (Westera, Kebbell, & Milne, 2011b). Common practice amongst prosecutors is to maintain control of the witness by using less reliable closed questions to elicit short responses (Cannan, 2006; Kebbell, Deprez, & Wagstaff, 2003). This method contrasts with the unfamiliar witness-centred approach of the CI, which is likely to result in long free narratives, more detail, and an account ordered according to the complainants recall.

In one of the few studies to examine the effects of video recording adult rape complainant CI's on justice system practices, Westera et al. (2011a) explored the perceptions of police officers who investigate adult sexual assault. Officers reported the main benefit of video recording interviews was improved quality of information from the complainant in terms of accuracy, detail and completeness. Many officers also perceived the heightened emotional state of the complainant nearer the time of offending may make pre-recorded evidence more credible to a jury. Contrastingly, many also perceived that a lack of logical order, the inclusion of inadmissible information and the complainant presenting contrary to juror expectations could diminish credibility judgments. Further, officers rated a mock-transcript of a rape complainant's account as less accurate and that they were less likely to charge the alleged offender when questioning was closed and leading compared to when open; suggesting access to the video may enable officer's to make more reliable accuracy judgments based on questioning.

Due to the limited research on this topic, we adopted an exploratory approach to extend Westera et al.'s (2011a) work and systematically examine prosecutor perceptions about using video recorded investigative interviews of rape complainants as evidence. Prosecutor perceptions are difficult to obtain but vital to understand as their perceptions of effectiveness are likely to determine whether they apply to use pre-recorded evidence. Further a critical component of their role is to assess how impactful evidence

will be to jurors. Thus, they are likely to be sensitive to the impact video-recorded evidence may have on a jury.

In sum, we attempted to answer the following research questions: (1) does police officers' interviewing influence prosecutor's perceptions of complainant accuracy, credibility, and recommendations to charge?, (2) What are prosecutor perceptions about the advantages and disadvantages of using video recorded interviews as evidence? And (3) how do prosecutors' perceptions of the characteristics of an effective investigative interview differ from those that provide the best evidence for a jury trial?

Method

Participants

Crown prosecuting agencies from three metropolitan regions in New Zealand agreed to participate in this study⁶. Lawyers from each agency who were involved in the prosecution of adult sexual assault cases were invited to participate anonymously via email containing an electronic link to the questionnaire. Participants were informed the questionnaire was about how to improve investigations and prosecutions in adult sexual assault cases. They were given four weeks to complete the questionnaire. Of the 112 prosecutors invited to participate 26.8% responded ($N=30$, although some failed to complete all sections of the questionnaire).

The mean age of those who completed the demographics section of the questionnaire ($N=26$) was 37.54 years ($SD=7.31$); tenure as a prosecutor ranged from 1 to 25 years ($M=8.85$ years, $SD=5.76$); 17 were female (65.4%) and 9 were male (34.6%). Of these 18 had viewed a CI, three did not know if they had and five had not. Nine had been involved in cases where pre-recorded evidence of an adult sexual assault complaint had been used as evidence.

Questionnaire

The questionnaire described in Westera et al. (2011a) was adapted for prosecutors and took about 30 minutes to complete. The first section used a between-subjects experimental design to assess participant's perceptions of the effectiveness of different questioning styles and interview format for an adult rape complainant interview. Participants were asked to rate a mock adult rape investigative case⁷. The

⁶ Griffith University Human Research Ethics Committee granted ethical clearance for this study and the research was conducted in accordance with the protocol granted. Refer to protocol reference number: PSY/61/09/HREC.

⁷ Copies of the interview conditions and questionnaire are attached in Appendix C and E respectively.

case included background information outlining an acquaintance rape at a party where the alleged offender claimed the sex was consensual and there was no other corroborating evidence. Transcript excerpts based on actual video recorded interviews with rape complainants were prepared for three conditions based on Köhnken et al. (1994) definitions: standard interview, structured interview and CI. An even number of participants were randomly assigned to each condition, but response rates meant the final distribution was uneven (standard $N=12$, structured $N=6$, cognitive $N=12$).

The account provided by the complainant was the same across all conditions but the interviewing format was manipulated. Each condition contained three excerpts – an initial account, a description of the offender, and a description of the sexual offending. The standard interview used inappropriate closed and leading questions throughout as reported as being present in traditional police interviews (see Köhnken et al, 1994). The structured interview used an open question to elicit a free narrative for the initial account and primarily open and some appropriate closed questions for the description of the offender and offending. The CI condition was identical to the structured condition but the interviewer's text also included the mnemonics report everything, context reinstatement and focused retrieval (as described in Milne, 2004).

After each excerpt participants rated their perceived accuracy of the information and the credibility of the complainant based on all the information they had received using a nine point Likert scale (1='not' accurate/credible; 9='very' accurate/credible). After the final excerpt, the likelihood of the alleged offender's guilt was rated by prosecutors on three dimensions: that they would recommend police charge; that if the video recording of the interview was played at a trial a jury would convict; and that the alleged offender actually committed the offence (1='very unlikely'; 9='very likely'). The rationale for the final guilt rating is that prosecutor perceptions about case outcome may be distinct from those about the alleged offender actually committing the offence. They were also asked to rate the realism of the scenario (1='not realistic'; 9='very realistic').

In the second section of the questionnaire open questions were used to examine participant's perceptions of the advantages and disadvantages to prosecutions of using the video recording of an adult sexual assault complainant's interview as evidence⁸. A thematic analysis was conducted with the content of responses coded by one researcher

⁸For ease of reading minor spelling mistakes and typos made in response to the questions were corrected.

(Gifford, 1998). A second rater coded a random selection of 20% of all responses and disagreements in coding were discussed and resolved. Cohen's Kappa testing found inter-rater reliability high and statistically significant (Advantages, $K=.95$; Disadvantages, $K=.94$; $p<.001$).

The third section requested participants rate a seven point Likert scale containing a list of 56 characteristics of a complainant's account according to what provided the "best information for investigations" (1='strongly disagree', 4='neutral'; 7='strongly agree'). The list included forensically relevant characteristics (e.g. accuracy, completeness, detail), interview characteristics (e.g. question types and interview techniques; derived from Milne, 2004), and complainant characteristics known to affect credibility ratings (e.g. consistency, emotion; derived from Memon, Vrij & Bull, 2003). Participants then used the same list of characteristics to rate the perceived "best evidence" for a jury trial. Finally demographic details were obtained.

Results

On average participants rated the realism of the scenario on a 9-point Likert scale as $M=7.13$ ($SD=1.57$) indicating they found the scenario reasonably realistic.

Interview condition and type of information

A preliminary analysis found accuracy and credibility ratings for each transcript were highly and significantly related using Pearson's correlations (initial account, $r(30)=.60$, $p<.001$; offender description, $r(30)=.74$, $p<.001$; and, action description $r(30)=.82$, $p<.001$). For this reason perceived accuracy ratings were used as the dependent variable in the following analysis. Further, because of the small sample size and the use of identical question-formats in both conditions, the structured and CI conditions were combined. Previous research suggests the presence of mnemonics, which is the only difference between the two conditions, does not affect actual (Köhnken, et al., 1999) or perceived accuracy (Fisher, Mello, & McCauley, 1999; Kebbell, Wagstaff, & Preece, 1998; Westera et al., 2011a). Therefore, this seems theoretically and pragmatically justified. Hence, from now on the structured interview includes both the structured interview and the CI.

A 2(standard/structured interview) X 3(initial account/offender description/action description) repeated measures ANOVA was conducted on ratings of complainant accuracy. These data are displayed in Table 3.1. There was a significant main effect of interview condition, $F(1,28) = 21.54$, $p < .001$, $\eta^2=.44$. Follow up t -tests

($p < .05$) on the mean scores indicate that the complainant was perceived to be less accurate in the standard ($M = 3.81$, $SD = 1.66$) than the structured interview condition ($M = 6.09$, $SD = 1.05$). Near significant effects were found for information type, $F(2,56) = 2.50$, $p = .09$, and for the interaction, $F(2,56) = 2.93$, $p = .06$. The near significant effects may be due to the small sample size.

Table 3.1

Means and standard deviations for interview condition broken down into type of information provided.

		Standard	Structured
Initial account	<i>M</i>	3.92	5.50
	<i>SD</i>	(2.07)	(1.47)
Offender description	<i>M</i>	3.67	6.00
	<i>SD</i>	(2.10)	(1.33)
Action	<i>M</i>	3.83	6.78
	<i>SD</i>	(1.85)	(0.81)

Interview condition and guilt

A 2 (standard/ structured interview) X 3(committed offence/charged/convicted) repeated measures ANOVA was conducted on ratings of alleged offender guilt. These data are displayed in Table 3.2. There was a significant main effect of interview condition, $F(1,28) = 5.48$, $p < .05$, $\eta^2 = .16$. Follow-up t -tests ($p < .05$) on the mean scores indicate that the alleged offender was perceived as being less likely to have committed the offence, to be charged and to be convicted in the standard ($M = 4.56$, $SD = 1.98$) than in the structured condition ($M = 5.81$, $SD = .95$).

There was also a significant main effect of guilt, $F(2,56) = 33.03$, $p < .001$, $\eta^2 = .54$. Follow up t -tests ($p < .01$) across all conditions indicate that prosecutors were more likely to recommend police charge the alleged offender ($M = 6.40$, $SD = 2.04$) than for the offender to have actually committed the offence ($M = 5.57$, $SD = 1.78$) and were even less likely to be convicted by a jury ($M = 3.97$, $SD = 1.54$). The interaction was not significant, $F(2,27) = 0.85$, $p < .05$.

Table 3.2

Means and standard deviations for interview condition broken down by judgments on likelihood the alleged offender was guilty.

		Standard	Structured
Committed the offence	<i>M</i>	4.75	6.11
	<i>SD</i>	(2.23)	(1.13)
Charged	<i>M</i>	5.42	7.06
	<i>SD</i>	(2.39)	(1.51)
Convicted	<i>M</i>	3.50	4.28
	<i>SD</i>	(2.02)	(1.07)

Advantages and disadvantages to prosecutions

Next, we used a series of open questions to examine prosecutor perceptions of the advantages and disadvantages to prosecutions of playing the video recorded interview of an adult sexual assault complainant as their evidence-in-chief. The most frequently perceived advantage categorized as ‘enhances forensic quality’ (75.9%), which consisted of features known to improve the quality of the information as distinct from credibility features. This category included increased accuracy, detail, completeness and certainty about the evidence the complainant would give. Also, the benefits to recall of the interview being conducted in a relaxed environment with a specially trained interviewer:

The video is usually made much closer to the time of the alleged offence. It is therefore more likely that the complainant will have a more detailed recollection as to what occurred. The reduced stress may also improve the complainant's ability to recall and his/her willingness to divulge details that might otherwise be embarrassing. The interviewer will be specially trained in this area, and may do a better job at obtaining an account of the alleged offending than the prosecutor at trial.

Many participants thought the video would make for ‘better evidence’ (51.7%). This category included credibility and persuasiveness such as the ability to see the complainant’s demeanour around the time of the offence. For example:

The complainant may be more able to give a more coherent and persuasive account in the less stressed environment of an interview.

The reduced opportunity for cross-examination due to a minimization of prior potentially inconsistent statements also featured in this category. 'Better for the complainant' (24.1%) was also another commonly cited response, particularly that pre-recorded testimony was less stressful for example:

...It assists the recovery of the complainant in that they do not have to go through the experience of being questioned by the prosecutor and describe very intimate matters (i.e. getting out the elements of the charge can be very difficult sometimes - penis in vagina for example). It shortens the length of time that witnesses are required to actually answer questions in Court, which makes the process easier for them.

One response was coded as 'miscellaneous' (3.5%).

The most common perceived disadvantage of using the video as evidence was categorized as 'interview format is not good evidence' (55.2%). Responses in this category included the lack of logical order, rambling by the complainant, empathy expressed by the interviewer and this inclusion of irrelevant and inadmissible detail creating concern as to the effectiveness of the interview as evidence, for example:

Very discursive and hard to follow at times. Lots of irrelevant stuff. Often admissible material is intermingled with inadmissible material. Often inherent contradictions which can be used by defence in a way that if the interview was done in the traditional manner wouldn't be the case.

The 'video is not good evidence' (31.0%) was other main disadvantage reported due this mode being perceived as less impactful than live evidence. For example:

For the assessment of demeanour, nothing compares to viva voce evidence being given during the trial. That is a major disadvantage because demeanour is often the main clue to credibility.

'Poor interviewing skills' was also seen as a disadvantage (31.0%) to using the video, with concerns about the quality of interviewing determining the effectiveness as evidence:

If the interview has been poorly conducted... it will inevitably affect the jury's view of the reliability of the complainant's evidence.

Other responses included the need to 'resource intensive' (10.3%) and two responses coded as 'miscellaneous' (6.9%).

Characteristics of interviewing for investigations and evidence

Finally, we explored prosecutor views of the ideal characteristics of the account given by an adult sexual assault complainant during a video recorded interview. On a seven point Likert scale participants were firstly asked to rate the 56 characteristics of the best information for investigative purposes and then, using the same scale, were asked to rate the characteristics if the video recording was used as evidence in chief at a jury trial (1= 'strongly agree', 4= 'neutral' and 7= 'strongly agree'). The rankings,

means and standard deviations for all the characteristics that were examined are in Table 3.3. A Kendall correlation of concordance for these data showed prosecutors were consistent in their ranking of characteristics (investigations Kendall's $W = .45$, evidence Kendall's $W = .45$, $p < .001$).

The mean ratings for the 56 characteristics were ranked separately for investigative and evidential scales from strongly agree to strongly disagree. Of note, the characteristics ranked as most desirable for investigations and evidence were similar and included factors relating to detail, accuracy, completeness and coherence of the information. The five least desirable characteristics were also similar for investigations and evidence and included factors relating to the use of inappropriate questioning, and the CI technique of eliciting information from a variety of orders. CI mental reinstatement of context technique also received one of the lowest rankings for being used as evidence.

Table 3.3

Rankings, means and standard deviations for the best characteristics of the complainant's account for investigative or evidential purposes.

Characteristic	Investigations			Prosecutions		
	<i>Rank</i>	<i>M</i>	<i>SD</i>	<i>Rank</i>	<i>M</i>	<i>SD</i>
Be as complete as possible	1	6.39	0.79	2	6.43	0.69
Be given near to the time of the alleged offence	2	6.29	0.81	8	6.14	0.80
Contain a high level of detail about information central to the alleged offence	3	6.25	0.84	3	6.36	0.78
Be coherent	4	6.25	0.75	5	6.32	0.77
Be probed for more detail about evidentially important topics e.g. 'tell me more about that...'	5	6.21	0.83	11	5.93	0.86
Be elicited through simply worded questions	6	6.18	0.72	9	6.07	0.72
Be clearly communicated	7	6.11	0.79	6	6.29	0.85
Be as accurate as possible	8	6.07	0.94	1	6.46	0.74
Include the interviewer using pauses and silence to give the complainant time to think	9	6.00	0.86	14	5.86	1.18
Address inconsistencies within and between	10	6.00	0.90	12	5.93	1.02

the complainant's accounts						
Contain peripheral information that can be corroborated by other witnesses	11	5.96	0.79	15	5.82	0.82
Be given in the complainant's own time	12	5.96	0.84	18	5.75	0.97
Appear to be accurate	13	5.93	0.86	4	6.36	0.78
Include the complainant being asked not to guess or fill in any gaps in memory	14	5.93	1.09	22	5.64	1.06
Be easily understood	15	5.89	0.92	7	6.21	0.74
Have the complainant doing most of the talking	16	5.86	1.04	20	5.68	1.02
Be primarily elicited using open questions (questions that elicit a wide answer – more than a few words) e.g. 'describe him to me...'	17	5.86	1.04	10	6.00	0.90
Contain primarily free narrative responses to the questions	18	5.79	1.07	19	5.71	0.98
Emphasise evidentially important points	19	5.64	1.06	17	5.79	1.03
Address any issues that may later be used to discredit the complainant	20	5.61	1.13	21	5.68	1.22
Include the complainant being asked to report everything they know	21	5.61	1.29	30	5.04	1.60
Tell a story	22	5.57	1.17	16	5.79	0.99
Include an explanation of the interview process	23	5.46	1.43	35	4.86	1.69
Include information that may seem trivial or unimportant to the complainant	24	5.36	1.03	32	4.96	1.35
Be in a logical order	25	5.29	1.21	13	5.86	1.08
Be elicited when the complainant is concentrating hard	26	5.29	1.21	29	5.11	1.42
Be elicited in a manner dependant on the characteristics of the complainant	27	5.29	1.27	26	5.21	1.07
Cover all avenues of the investigation	28	5.21	1.20	46	4.25	1.48
Include the interviewer building rapport with the complainant	29	5.18	1.66	42	4.32	1.83

Contain information that is peripheral to the alleged offence but helps the complainant remember	30	5.14	1.08	39	4.61	1.64
Be elicited using a structured interview (using open and then closed questions)	31	5.14	1.41	24	5.32	1.28
Be elicited using the enhanced cognitive interview	32	5.07	1.18	34	4.93	1.21
Contain no ambiguities	33	5.00	1.31	28	5.18	1.47
Contain a high level of detail about information peripheral to the alleged offence (i.e. information not directly relevant to the charges)	34	5.00	1.61	48	4.00	1.70
Include the drawing of a sketch plan of the scene by the complainant	35	4.96	1.29	33	4.93	1.54
Be ordered according to the complainant's recall	36	4.93	1.27	43	4.29	1.49
Include partial memories	37	4.93	1.12	44	4.29	1.21
Be provided in a confident manner	38	4.82	1.39	23	5.39	1.13
Contain no inconsistencies within the account	39	4.63	1.50	27	5.21	1.55
Not be interrupted	40	4.57	1.53	31	5.00	1.31
Include memories they are not confident in	41	4.50	1.29	51	3.75	1.17
Cover evidentially important topics more than once	42	4.50	1.43	38	4.68	1.59
Be in chronological order	43	4.50	1.45	25	5.29	1.21
Cover evidentially important topics first	44	4.32	1.33	37	4.82	1.36
Be given from a variety of perspectives e.g. from the complainant's own viewpoint and the viewpoint of the offender	45	4.18	1.33	49	3.82	1.56
Contain verbal hesitations, verbal hedges and false starts in speech e.g. 'Um...', 'I think..', 'I...he...'	46	4.11	1.31	47	4.07	1.27
Be concise	47	4.07	1.65	36	4.82	1.59
Be elicited after they have been asked to	48	4.04	1.53	45	4.25	1.53

concentrate hard						
Only contain information directly relevant to the alleged offence	49	3.54	1.67	41	4.32	1.33
Be elicited after giving them mental cues about the physical and emotional context	50	3.46	1.64	52	3.61	1.52
Be emotional	51	3.39	1.23	40	4.36	1.37
Be elicited in a variety of orders e.g. forwards and backwards	52	3.32	1.31	55	3.04	1.55
Contain primarily short and direct responses to the questions	53	3.29	1.18	50	3.75	1.27
Be elicited using a traditional police interview (using direct short answer questions)	54	3.11	1.45	53	3.50	1.26
Be primarily elicited using closed questions (questions that elicit a few words to answer) e.g. 'what colour was his shirt?'	55	3.07	1.44	54	3.18	1.44
Be primarily elicited using leading questions (questions that imply the answer) e.g. 'was he wearing a brown shirt?'	56	1.39	0.74	56	2.00	1.44

A comparison of ratings of the characteristics for the best information for investigations with the characteristics of best evidence for a jury trial was conducted using *t*-tests with a Bonferroni correction of $p = .0009$ (because of the number of comparisons) found no significant differences. Of note, the structured interview was however rated similarly to the CI for use in investigations (structured: *Rank* = 31, *M* = 5.14, *SD* = 1.41; CI: *Rank* = 32, *M* = 5.07, *SD* = 1.18), but rated higher for use as evidence (structured interview: *Rank* = 24, *M* = 5.32, *SD* = 1.28; CI: *Rank* = 34, *M* = 4.93, *SD* = 1.21).

Discussion

The first aim was to examine whether prosecutors make full use of the video recorded interview by using questioning as a gauge for accuracy of rape complainant testimony. When questioning was closed and leading, compared to open, prosecutors rated the complainant as less accurate and less credible. These findings suggest prosecutors are correctly judging how certain types of questions can negatively affect

the actual accuracy of the response provided (e.g. Loftus & Palmer, 1974). Further, when questioning was closed and leading prosecutors were less likely to recommend police charge, and believe a jury would convict the alleged offender, indicating poor questioning could affect case outcomes. Access to the video recorded interview means prosecutors can scrutinize how the information was elicited from the complainant, which as previously discussed is one of the strongest determinants of accuracy (e.g. Powell et al., 2005).

The importance of appropriate questioning is supported by prosecutors rating poor interviewing practices such as using leading questions, closed questions, and the traditional police interview as the five least desirable characteristics of the complainant's account when used for either investigations or evidence. Further, when asked about the disadvantages of pre-recorded evidence, some prosecutors commented that the quality of the evidence depended on police interviewing skills and that jurors may draw adverse inferences about the complainant if interviewing was poor. Police maintaining high interviewing standards is therefore vital, as poor practices may result in prosecutors deciding the complainant's account is less evidentially sufficient and the case not proceeding to trial.

We explored prosecutor's perceptions of the advantages and disadvantages of using the complainant's video recorded interview as their evidence in chief. Prosecutors perceived the main benefit as the increased accuracy, detail and completeness of the complainant's testimony. These perceptions are consistent with understandings about memory decay over time (see Read & Connolly, 2007). Contrary to cynicism about the importance of the "truth" in the adversarial system (e.g. Danet & Bogoch, 1980, Evans, 1995), these findings were supported by prosecutors rating accuracy, detail and completeness in the top three characteristics for a complainant's account when being used as evidence. Further exploring the actual differences between memory accounts made in the investigative interview and courtroom testimony is a promising area of future research particularly as studies suggest strength of evidence is the primary determinant of verdict (for a review see Devine, Clayton, Dunford, Seying & Pryce, 2001; or Daly & Bouhours, 2009 for sex offending specifically). If pre-recorded evidence does improve the quality of information from rape complainants, so should the ability of fact-finders to reach effective resolutions. Indeed, such improvements may also have a knock on effect by increasing the likelihood of corroboration of the complainant's account with other evidence.

Despite prosecutor perceptions of the benefits to actual quality of information, the usefulness of an investigative interview as credible and persuasive evidence was a topic of contention. Elaborating and extending on findings from previous studies, the main concern of prosecutors was that the interview format is less persuasive than traditional testimony (e.g. Criminal Justice Joint Inspection, 2009; Stern, 2010). On the surface the data suggests these previous studies correctly attributed the concerns to poor police interviewing practices. Only an actual analysis of interviews will show for sure if practices are poor and, of course, police interviewers have been shown to struggle to effectively use the CI and open questioning (see Powell et al., 2005). If this was the case however, we would have expected prosecutors to mention concerns about the vital but elusive skill of questioning, especially as we have shown prosecutors can recognise poor questioning. No prosecutors did so. Instead, a majority of the concerns related to the length and rambling nature of the account, repetition, lack of logical order and clarity. These concerns are consistent with the CI encouraging free narratives, repeated retrieval attempts, and the witness to report everything in detail and in their own order. This format is clearly a departure from prosecutor views that impactful evidence is coherent and concise (e.g. Davis et al., 1999). Misgivings about the CI format were further supported by prosecutors providing higher ratings to the structured interview than the CI as the best method for eliciting evidence at trial. Also, the CI context reinstatement and change of temporal order mnemonics were ranked in the bottom five characteristics for a complainant's account when used as evidence. Taken together, these findings indicate prosecutor concerns about pre-recorded evidence are primarily due to the suitability of the CI as persuasive and credible evidence.

Examining this issue further, in our study prosecutors rated open questioning as preferable to closed, but paradoxically, expressed concerns about the free narratives in pre-recorded evidence, which open questions elicit. Powell, Wright and Hughes-Scholes (2010) similarly found that despite specialist child prosecutors preferring free narrative responses from child witnesses, they also wanted greater control exercised over the content of the testimony. Children are more prone to errors of omission so this concern is likely to be exaggerated with adult testimony (Hutcheson et al., 1995). Further, when eliciting testimony from adult rape complainants prosecutors themselves have been shown to use closed rather than open questions (Cannan, 2006; Kebbell et al., 2003). Prosecutors wanting the flexibility to strategically present the evidence to the jury and use closed questions as warranted by the occasion may explain these conflicting views.

Alternatively, like police interviewers, prosecutors may struggle to distinguish between, use, and understand the benefits of, open when compared to closed questioning (Wright & Powell, 2006). Indeed, several prosecutors acknowledged the specialist nature of interviewing skills by citing the use of trained police interviewers as a benefit of pre-recorded testimony.

To our knowledge only two studies have specifically examined the usefulness of the CI as credible evidence. Fisher et al., (1999) explored whether the CI might falsely enhance perceived credibility due to the extra detail and other attributes known to affect credibility judgments such as confidence (e.g. Wells & Leippe, 1981; Wells, Lindsay & Ferguson, 1979). When an audio recorded CI was compared to a standard interview, students' ratings of witness credibility, confidence and memory accuracy judgments did not vary. Of note, the interviews in this study were only 15 minutes long, far shorter than actual interviews criticized for being overly long⁹. In the other study, Kebbell, Wagstaff and Preece (1998), also found no differences in credibility judgments when CI mnemonics were added to witness testimony transcripts. Clearly further research is required to examine the usefulness of the CI as evidence and how other complicating factors may interact with this method of interview, such as the biases inherent in rape cases.

Aside from the effects of interview format and questioning on prosecutor perceptions, this study also produced some other useful findings. Firstly, prosecutors were concerned that the use of the video medium may detract from the persuasiveness of the evidence. This contrasts with research findings on child video testimony (see Davies, 1999) and the few studies on adult testimony that suggest any effects on credibility judgments and case outcome are negligible (Landström, Granhag & Hartwig, 2005; Taylor & Joudo, 2005). Secondly, like police officers, prosecutors perceive the use of pre-recorded evidence improves the process for rape complainants (Westera et al., 2011a). Vulnerable witnesses themselves also report they want the option of giving their evidence via video (Burton et al., 2006; Hamlyn, Phelps, Turtle & Sattar, 2004). So even if the video is less persuasive as evidence, this factor should be weighed against potential improvements to the court process for complainants.

Finally it is important to note that a limitation to this study is that the self-selecting sample may not be representative of all prosecutors. Those who chose to

⁹In 2009 the average length of video recorded interviews with adult witnesses at the Wellington Police Station in New Zealand was 116 minutes (personal communication with Detective Deborah Braun).

respond to the questionnaire may be more motivated to improve rape investigations and prosecutions, and hence be more aware of the issues around using pre-recorded evidence. The use of abridged transcript excerpts as the only evidence available means this part of the study design was sensitive to any accuracy attributions made from questioning style. Further, prosecutor perceptions may vary from their actual behaviour, so studies on how police questioning effects prosecutor decision making in real cases could be a direction for future research.

In sum, prosecutors appear to have a good understanding on how using pre-recorded evidence can enhance the reliability and completeness of rape complainant testimony. Tension exists however, between how improvements in information quality translate into credible evidence compatible with the adversarial justice system. Communication between interviewing experts, prosecutors, and judges, and on-going research and innovation will help ensure the benefits are realized in the court room. Using pre-recorded evidence is a promising means of improving the court process for rape complainants, enhancing the quality of their testimony and achieving justice.

Chapter 4: Losing two thirds of the story: A comparison between recorded police interviews and the live evidence of rape complainants.

If the case reaches trial a jury decides on the outcome based on the evidence presented at court. The first two studies in this thesis suggest that accuracy, completeness and detail are some of the most desirable characteristics of rape complainant testimony to both prosecutors and police. Furthermore, both groups not only perceive appropriate questioning strategies as important, but also were less likely to recommend charges are laid when questioning is poor. Strength of evidence is one of the primary determinants of verdict (Devine et al., 2001; Visher, 1987), so if pre-recorded evidence does enhance the accuracy, detail and completeness of complainant testimony this may increase the likelihood a jury will convict. The purpose of Chapter 5 was therefore to examine how the complainant's testimony differs when the pre-recorded police interview is compared to live evidence. To my knowledge before now no studies have made this comparison. The slow uptake of pre-recorded evidence with adult rape cases provides a unique opportunity to conduct within subject comparisons between the complainant's video recorded investigative interview and their live direct evidence. The consistency, questioning and interview format of the complainant's account in the investigative interview with that of their live evidence given at trial in real rape cases was examined. For the consistency analysis a customized coding scheme was developed to particularize details that may make complainant testimony more convincing by reducing the ambiguity around consent and enhancing the believability of the complainant's account.

Statement of contribution to co-authored published paper

This chapter is a co-authored paper submitted for publication. The bibliographic details of the submitted paper, including all authors, are:

Westera, N., Kebbell, M., & Milne, B. (In submission). Losing two thirds of the story: A comparison between recorded police interviews and the live evidence of rape complainants. *Law and Human Behavior*.

My contribution to the submitted paper involved:

The conception and design of the research project, data coding and analyses, writing and revising the article. Mark Kebbell was responsible for comment on the design of the study, statistical advice and assistance, and reviewing the article. Becky Milne was responsible for comment on the design of the study and reviewing the article.

(Signed)  _____

Nina Westera

(Countersigned)  _____

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(Countersigned) _____

Supervisor and corresponding author of submitted paper: Mark Kebbell

Despite over thirty years of criminal justice sector reform, conviction rates in adult rape cases are still troublingly low (Daly & Bouhours, 2010). In part, the difficulty in investigating and prosecuting these types of cases is the hidden nature of the offending. A paucity of other evidence means establishing the charges often relies solely on the complainant's testimony (Lees, 2002). The quality of complainants' recall and how convincing these accounts are has a central role in determining if a conviction occurs. One underutilized legal reform, now available in some countries, has the potential to improve both these features (e.g. New Zealand, England, Wales, Northern Ireland, Norway and the Australian state of North Territory; Australian Law Reform Commission, 2010; Criminal Justice System, 2007; Mahoney, McDonald, Optican, & Tinsley, 2007; personal communication with Superintendent Rygh Norway Police Service). That is using the video-recorded interview of the complainant made during the investigation as their pre-recorded direct evidence¹⁰. The interview methods used and decay of memory over time means the video is likely to preserve a more complete and accurate recall from the complainant than live evidence given at trial (Fisher & Geiselman, 1992; Read & Connolly, 2007). In addition, the detail within that earlier account may help to counter rape stereotypes that bias juror decision making against the complainant (e.g., Tempkin & Krahé, 2008).

Until now no research has directly examined the actual differences in testimony when live mode of evidence is compared to pre-recorded. If the differences are negligible, there may be little point in increasing the use of pre-recorded evidence. On the other hand, if the quality of testimony is enhanced, this may achieve the elusive goal of increased convictions in rape cases. In this study, therefore, the way account given by an adult rape complainant varies from their investigative interview to live direct evidence at trial was compared. Before outlining the present study, we examine why pre-recorded evidence may improve the quality of evidence and how convincing it might be perceived to be.

Quality of testimony recall

There are three main reasons why the jury may receive a more reliable and fairer representation of events from the complainant with pre-recorded evidence. Firstly, memory is likely to decay in the delay between the interview and trial. An extensive

¹⁰ In this article pre-recorded evidence refers to use of the video recorded investigative interview as direct evidence rather than a pre-recorded court hearing. During the trial the complainant is still cross-examined in the usual way or through other alternative modes such as CCTV or behind screens.

body of research suggests that the amount of information recalled decreases as time from the event increases (Ebbinghaus, 1913; Read & Connolly, 2007; Rubin & Wenzel, 1996), and fine grain detail is more rapidly forgotten than coarser detail (Begg & Wickelgren, 1974; Goldsmith, Koriath, & Pansky, 2005; Kintsch, Welsch, Schmalhofer & Zimny, 1990). Further, over time there is more opportunity for memory distortions that affect the quality of information. These distortions can occur through both exposure to information from other sources (Gabbert, Memon, & Allen, 2003; Loftus & Palmer, 1974; Loftus & Zanni, 1975) and internally during rehearsal (Greenberg, Westcott, & Bailey, 1998; List, 1986; Tuckey & Brewer, 2003). Indeed it can be argued that memory needs to be seen as a “crime scene” with the potential for contamination needing to be minimized.

Secondly, the different questioning strategies used by police and prosecutors may have a strong influence on the type of information elicited (Powell, Fisher, & Wright, 2005). Recommended investigative interviewing practice is that open questions that encourage the respondent to provide an unrestricted answer are the best to use as they tend to provide the most accurate answers (*e.g.* Hutcheson, Baxter, Telfer, & Warden, 1995; Lipton, 1977; Poole & White, 1991). As a general proposition, as questions become more closed the responses become less accurate. This is because rather than the interviewer asking the witness what they remember, the interviewer is asking the witness what they want them to remember. In doing so the witness may become suggestible to the demands of the interviewer (Kebbell & Wagstaff, 1999; Milne & Bull, 1999). Therefore open questions that produce long free narrative responses are considered most desirable. Allowing the witness to control the flow of information in this way also generates more elaborate recall (Powell et al., 2005). Hence closed questions are only encouraged when open questions are no longer fruitful and more specific information is required. In contrast to the police, prosecutors state they prefer open questions (Powell, Wright, & Hughes-Scholes, 2010; Westera, Kebbell, & Milne, *in press*), however official guidance recommends eliciting shorter and more concise answers (Evans, 1995). Prosecutors perceive that controlling the witness in this way makes the evidence more impactful (Westera et al., *in press*), which of course may come at the cost of reduced information quantity and quality. Nevertheless, both police and prosecutors are discouraged from using leading or suggestive questions that reduce response accuracy by implying the desired answer (Clifford & Scott, 1978; Lipton, 1977; Loftus & Palmer, 1974).

Thirdly, unlike prosecutors, many police are trained to use the cognitive interview (CI) (Criminal Justice System, 2007; New Zealand Police, 2009). Developed in the United States by psychologists Fisher and Geiselman, the CI increases the amount of information recalled by the witness without reducing accuracy (Fisher & Geiselman, 1992; Köhnken, Milne, Memon, & Bull, 1999; Memon, Meissner, & Fraser, 2010). The CI uses a series of mnemonics based on encoding specificity theory to increase the feature overlap between encoding and retrieval (Geiselman et al., 1984; Tulving, 1974). Again in contrast to controlled prosecutor questioning, the CI encourages the witness to take control and do most of the talking in their own words, order and time (Fisher & Geiselman, 1992). If CI techniques are used effectively, the interview is likely to contain even longer free narrative responses and more detail than live evidence.

No studies have directly compared the differences between police and prosecutor questioning and interview format. Kebbell, Deprez and Wagstaff (2003) examined real rape cases and found closed questions dominated the direct examination of the complainant (see also Zajac & Cannon, 2009). The fact that witness field research demonstrates that the police struggle to use open questions suggests the differences with direct examination may not be so great (Clarke & Milne, 2001; Clifford & George, 1996; Dando, Wilcock, & Milne, 2009). However, prosecutors perceive that police interviews elicit longer narrative responses (Westera et al., in press). The studies discussed above could not detect whether longer narratives are elicited by police interviewing because how question type influences response length was not examined. Response length is also important as the questioning may not be as poor as these studies suggest if a smaller number of the more productive open questions actually elicit most of the information (see Griffiths & Milne, 2006).

In rape cases if the complainant's recall is diminished this is likely to reduce convictions. Most obviously, the pivotal role of the complainant's testimony may mean the charges are not established and the defendant is acquitted. Even independent evidence may have little corroborative value. For instance, DNA evidence indicating sexual activity does not establish if the activity was consensual. In contrast to direct evidence, defence counsel can introduce information that is favorable to their case by cross-examining the complainant about their interview. A common defence tactic is to exploit these and other memory recall discrepancies to discredit the complainant (Evans, 1995). For example, inconsistency about one item is used to suggest the complainant's entire testimony is unreliable, even though research suggests the global relationship

between inconsistency and reliability is weak (Brewer et al., 1999; Fisher, Brewer, & Mitchell, 2009; Oeberst, 2011).

Convincing testimony

For a conviction to occur in an adversarial criminal trial, not only does the prosecution need to provide sufficient details to prove the charges but also the complainant's version of events must convince a jury. Here, the believability of the complainant's account in relation to consent is usually the central issue (see Lees, 2002). Research consistently suggests rape myths bias juror decision making against the complainant (see Tempkin & Krahé, 2008). In particular, jurors are reticent to convict when events diverge from their expectations that 'real rape' involves a stranger who forcibly attacks a physically resisting complainant (Ellison & Munro, 2010; Schuller, McKimmie, Masser, & Klippenstine, 2010; Tempkin & Krahé, 2008). In reality most rapes are more consistent with a 'normal' consensual male dominated heterosexual encounter. Thus, the more details the complainant can provide that distinguish the offending from a 'normal sex' script the greater the likelihood of conviction (Kebbell & Westera, 2011). In other words, if pre-recorded evidence contains additional details about features that differentiate the complainant's experience from normal sex this may make the testimony more believable to a jury and hence the jury may be more likely to convict. To this end the type of details provided by the complainant matters. Details about the complainant's cognitions may explain her own counter-intuitive behavior, for example why she did not physically resist the attack. The strong relationship between emotion and credibility means details about her emotional response may also make her account more convincing (Dahl et al., 2007; Kaufmann, Drevland, Overskeid, & Magnussen, 2003). In addition to enhancing recall, the less stressful and witness controlled environment of the interview room may be conducive in eliciting these more personal details. Likewise, the complainant may provide more details on the difficult to talk about topic of the sexual acts, detail jurors may find convincing (Bell & Loftus, 1985; 1988; Wells & Leippe, 1981). The delay between interview and trial also means verbal details that may reduce ambiguity around the issue of consent, such as conversations between the complainant and defendant, are likely to be forgotten (e.g., Begg & Wickelgren, 1974). Rehearsal of an account also may create a robotic witness, a witness who may sound less convincing to a jury.

The present study

The purpose of the present study was to conduct a real life examination of the differences between the interview and live evidence at trial. The slow uptake of pre-recorded evidence with adult rape complainants provides a unique opportunity to do so. This is because as a matter of policy, the police already interview the complainant on video in preference to the traditional but less reliable method of taking a written statement (Criminal Justice System, 2007; Köhnken, Thurer, & Zoberbier, 1994; Lamb, Orbach, Sternberg, Hershkowitz, & Horowitz, 2000; New Zealand Police, 2009). As such, within subject comparisons between the record of these interviews and those of live direct evidence are possible. Similar comparisons were not possible when pre-recorded evidence was introduced for children. Unlike with adults, pre-recorded evidence mode was generally used and the police only began to video interview children because of these legal reforms (Davies, Wilson, Mitchell, & Milsom, 1995). The present study is therefore the first to compare a witness's investigative interview with their live direct evidence. We examined question type, response length, interview format, and consistency of live evidence to the interview. Another innovation of this study was to add verbalizations, cognitions and emotions, which are highly relevant to the issue of consent, to the typically used coding schemes (*e.g.*, Yuille & Cutshall, 1986).

We expected both police and prosecutors would show a preference for closed rather than open questions, where open questions in the interview would generate longer responses than in live evidence. We also expected that CI techniques would be present in police interviews but never used in direct evidence. We made no predictions on what percent of the total information would be produced by each question type due to the exploratory nature of this part of the research. The effects of memory decay, the different questioning strategies and stress lead us to also predict that for all detail types live evidence would contain a large number of omissions and some inconsistencies when compared to the interview. Again, due to its exploratory nature, no predications are made about how each detail type may vary.

Method

Court transcripts

Permission for the release of court documents was obtained from the Chief District Court Judge for three metropolitan areas in New Zealand. Documents were

requested for all jury trials held in a one year period over 2010 and 2011 that included an indictment of sexual violation¹¹ against a female complainant aged 18 years or over at the time of offending. These documents included: the complete transcripts of the complainant's police interview and testimony; all indictments and related verdicts; and any alternative way of evidence applications made. The crown prosecuting agencies in each area supplied the copies of the requested documents to a member of the New Zealand Police not otherwise involved in the research. All identifying information was removed before all relevant documents were provided to the authors¹².

During data collection the Christchurch area suffered from two devastating earthquakes and therefore was unable to participate in the study reducing the sampling pool to two areas. In total, court documents for fourteen sexual violation trials were obtained¹³. In two cases the complainant's investigative interview was recorded on written statement not video and were excluded from the sample due to the poor reliability of this method (Köhnken et al., 1994; Lamb et al., 2000). A further two cases were excluded because the complainants were declared hostile during trial and therefore did not provide a valid comparison between the interview and court testimony. The final sample consisted of the remaining cases ($N=10$). Of note, in these cases no prosecutors applied to use the video as evidence despite legislative provisions enabling them to do so. This meant all complainants gave live evidence and were suitable for within-subject comparisons.

Of these cases, six were allegations against a current or former de facto partner, three were against an acquaintance and one was against a stranger. Four of the de facto partner allegations related to multiple indictments for a series of incidents over the time period; all the other cases related to one incident but also sometimes included a series of indictments. In total there were 49 indictments: 36 for sexual violation; 1 for indecent assault and 22 for violent offences. The defendant was found guilty of at least one indictment of sexual violation in six cases; not guilty on any indictments of sexual violation in three cases; and the jury was hung in one case. This conviction rate is

¹¹ In New Zealand law sexual violation is the penetration of a person's genitalia or anus by any part of another person or by an object held or manipulated by any person without consent. Some countries refer to this as 'rape', as we do for the rest of the article.

¹² Griffith University Human Research Ethics Committee granted ethical clearance for this study and the research was conducted in accordance with the protocol granted. Refer to protocol reference number: PSY/61/09/HREC.

¹³ A summary of each case is attached in Appendix F.

similar to the average of 54.5% found in a review of five Western countries from 1990-2005 (see Daly & Bouhours, 2010).

The prosecutor for each case completed a questionnaire to establish their rationale for decisions about mode of evidence, the defence used, and to gather demographic details¹⁴. Before being distributed, two prosecutors reviewed the draft questionnaire and it was amended to enhance usability. The defence for nine of the cases was consent and for the remaining case it was that the offending did not happen. Of the prosecutors for each case, two were female and eight were male; the mean age was 38.00 years ($SD=6.45$) and mean tenure as a prosecutor was 8.55 years ($SD=6.65$).

A review of the court documents¹⁵ found the age of the complainants at the time of the first interview ranged from 19 to 74 years ($M=33.78$, $SD=17.58$; $N=9$). Two were interviewed twice. The time elapsed between the alleged offence and the interview ranged from zero to 70 days ($M=14.8$ days; $SD=22.41$; $N=9$ due to the exclusion of one outlier of 26 years). The mean time elapsed between interview and trial was 610.50 days ($SD=303.67$; $N=10$). The police interviewer's demographic and training details were not available. The New Zealand Police policy is however to use specialist interviewers trained in the CI to conduct these types of interviews, whether this happens in practice has not been systematically examined.

Transcript analysis

All cases were coded to allow within subject comparisons between the investigative interview and live direct examination. The dependent variables measured were questioning, response word count, CI components used, and consistency between accounts¹⁶.

Question coding

Each question asked by the investigative interviewer and the prosecutor was counted and classified into one of five categories¹⁷. The categories common to investigative interviewing research and described in Kebbell et al. (2003) were used. The first category denotes open questions and the remaining four denote different types of closed questions:

¹⁴ A copy of the questionnaire used by prosecutors is attached in Appendix G.

¹⁵ Not all the information was available in the transcripts so samples sizes vary.

¹⁶ The coding guidelines for this study are attached in Appendix H.

¹⁷ Multiple and negative questions were removed from the original questioning regime. These types of question usually receive multiple codes as they are used in addition to higher category questions. Hence including these questions would not enable the discrete question categories required to calculate word count per answer.

- (1) Open questions: questions that require more than a few words to answer (*e.g.*, “Describe what happened”).
- (2) Specific closed questions: questions that require only a few words to answer (*e.g.*, “Where were you on the bed?”).
- (3) Yes/No questions: questions that can be answered with a yes or no but are not leading (*e.g.*, “Did you want that to happen?”).
- (4) Forced choice questions: questions that limit the complainant’s response to a series of options (*e.g.*, “Were his hands on top of or underneath your clothing?”).
- (5) Leading questions: questions that suggest an answer (*e.g.*, “His penis went into your vagina?”).

To examine how the questions functioned, the number of words in response to each question was counted excluding verbal facilitators.

Interview format coding

The CI techniques used by the interviewer and prosecutor were also coded. The scoring method developed by Dando et al (2009) was used with each interviewer’s application of the CI techniques rated on a three point scale (2= fully and correctly applied; 1 = attempted but not fully and correctly applied; 0 = not applied/attempted). Originally developed for frontline officers, the CI techniques on this coding scheme were extended due to the specialist nature of these interviews. Eleven categories based on Milne (2004) were used: (1) encourage concentration; (2) report everything; (3) transfer control; (4) don’t guess; (5) mental reinstatement of context; (6) free report; (7) witness compatible questioning; (8) sketch plan; (9) imaging; (10) change perspective; and (11) change order.

Consistency coding

The details central to establishing what happened during the alleged sexual or violent offending and the related *mens rea* were coded in the complainant’s investigative interview and direct examination transcripts. Only these central details were coded for two reasons. Firstly, the facts at the time of offending are supposed to be the primary determinant as to whether the offence specified in each indictment is proven. Secondly, both the interview and evidence always attempt to establish these types of details, unlike other information that may not be covered by both interviews (*e.g.*, information not available and therefore not explored during the initial interview of the complainant but may be included in direct examination). Parts of the transcript that related to what happened during the alleged offending as specified by the indictments

were therefore identified and coded. For example, for an indictment of rape the transcript was coded for everything that happened from “he pushed me on the bed” to “he rolled over and fell asleep”. Further, all details that could help establish *mens rea* leading up to the time offending were coded. For example, “Earlier in the evening I told him I didn’t want him near me” was included even though it took place prior to the rape event as it may help to establish lack of consent.

Each detail was coded based on the method developed by Yuille and Cutshall (1986) and elaborated on by Lamb et al. (1996; 2000). One unit of detail was “defined as a word or phrase identifying or describing individuals, objects, or events (including actions)” (p.702; Lamb et al., 2000). Of note, these original coding schemes only used different categories to denote actions, person and object descriptions. Instead, to identify details relevant to consent, we categorized each unit of detail into one of five categories. Four categories related to actions usually signified by verb or adverb phrases: (1) physical action (*e.g.*, “he pushed me onto the bed”); (2) verbalization (*e.g.*, “he asked me if he could continue”); (3) cognition (*e.g.*, “if he didn’t do what he said I knew I would get a hiding”); and (4) emotion (*e.g.*, “I was terrified”). Identity was not an issue in any of the cases, so descriptions of persons and objects were not often relevant. The remaining category therefore related to all descriptive details usually signified by nouns and adjectives: (5) person/object description (*e.g.*, “I was wearing my underwear”).

Finally, Milne and Hope’s (in preparation)¹⁸ coding system was used to classify the consistency of each detail in the investigative interview with live direct evidence into one of five categories:

- (1) Consistent: items that matched across the interview and direct examination,
- (2) Omission: items present in the interview but were not present in direct examination (*e.g.*, “he inserted his fingers *from behind*” verses “he inserted his fingers”),
- (3) Distortion: items that are different between the interview and direct examination but not entirely contradictory (*e.g.*, “I said *stop*” verses “I said *no*”),
- (4) Contradiction: items that are entirely contradictory between the interview and direct examination (*e.g.*, “that time *he didn’t touch me* down there” verses “first *he touched me* down there like he always does”), and
- (5) New: items present in direct examination but not present in the interview.

¹⁸ For information about this article contact Becky Milne at becky.milne@port.ac.uk.

In the small number of cases where there were inconsistencies within transcripts, the final position taken by the complainant was used for consistency comparison. Re-examination was not coded because it only relates to new information raised under cross-examination.

Inter-rater reliability

Two experimenters independently coded 20% of all transcripts for both questioning and consistency of each detail identified. Inter-rater reliability was high and statistically significant ($p < .001$; $K = .88$; $K = .81$, respectively). The lower agreement for consistency ratings was due to inter-rater discrepancies about the number of details rather than the consistency of these items. One researcher, who is an experienced police officer and interview trainer, scored the CI components and identified the central details in the transcripts.

Results

First, analyses were conducted on question type and response length to explore the differences between the interview and live direct evidence.

Use of question types in the interview and live evidence

On average less questions were asked in the interview ($M = 191.70$; $SD = 215.53$) than in live evidence ($M = 253.80$; $SD = 131.74$). A t -test showed these differences were not significant ($p < .05$). The scores of each different question type were converted into percentages to ensure the results were not confounded by the differences in the number of questions for each case. A 2(interview/live) X 5(open/closed/yes no/leading/forced choice) ANOVA with repeated measures on the second factor was conducted on the percent of each question type used. These data are displayed in Table 4.1. A significant main effect was found for question type $F(4,36) = 35.14$, $p < .001$, $\eta^2 = .80$, but there were no significant effects of evidence type, $F(1,36) = 1.04$, $p < .05$, $\eta^2 = .10$, or any interactions $F(4,36) = .75$, $p < .05$, $\eta^2 = .08$. Follow-up t -tests ($p < .05$) on the mean percentages for each question type found no significant differences in the use of open and yes/no questions. However, both these types of questions were significantly more likely to be used than closed, leading and forced choice questions. Closed questions were significantly more likely to be used than forced choice and leading questions that did not differ from each other.

Response length to questions in the interview and live evidence

We analyzed the length of the complainant's response to each question asked. A 2(interview/live) X 5(open/closed/yes no/forced choice/leading) ANOVA with repeated measures on the second factor was conducted on response word count. These data are displayed in Table 4.1. A significant main effect was found for evidence type $F(1,36) = 14.57, p < .01, \eta^2 = .62$, with more information elicited in the interview than in evidence. A significant main effect was also found for question type $F(4,36) = 5.28, p < .01, \eta^2 = .37$. Follow-up t -tests ($p < .05$) on the mean response count for question type found that open questions elicited significantly longer responses than closed, yes/no and leading questions. Yes/no questions produced significantly longer responses than leading questions. There were no other significant differences.

Table 4.1

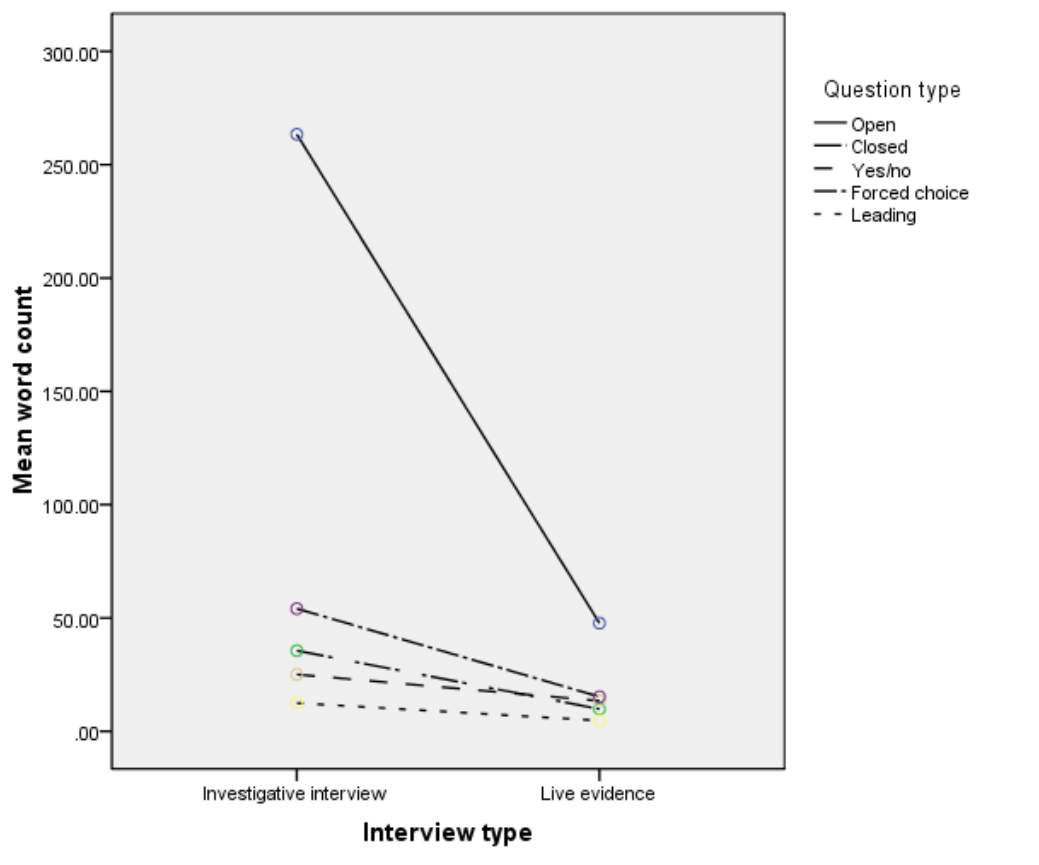
Means and (standard deviations) for percent of question types and response word count during the interview and live evidence

Type	Percent of question type		Response word count	
	Interview	Live	Interview	Live
Open	37.40 (15.76)	42.07 (11.44)	262.67 (305.62)	46.55 (65.15)
Closed	13.76 (9.00)	11.98 (5.46)	32.34 (31.81)	9.83 (4.39)
Yes/No	39.91 (18.02)	38.61 (10.57)	24.80 (13.53)	12.88 (19.86)
Forced choice	4.16 (3.03)	2.40 (1.75)	48.39 (90.77)	17.34 (15.02)
Leading	3.91 (3.89)	2.40 (1.75)	11.41 (18.23)	4.46 (4.30)

These main effects were however qualified by a significant Evidence type X Question type interaction, $F(4,36) = 5.08, p < .01, \eta^2 = .36$. This interaction is shown in Figure 4.1. Follow-up t -tests and consideration of the interaction plots shows this is primarily due to open questions producing more than five times longer responses in the interview than in live evidence.

Figure 4.1

Mean response word count by question type for the investigative interview and live evidence



Percent of information elicited by question type in the interview and live evidence

We analyzed what percentage of the total word count was generated by each question type. A 2(interview/live) X 5(open/closed/yes no/leading/forced choice) ANOVA with repeated measures on the second factor was conducted on the percent of total word count provided. A significant main effect was found for question type $F(4,36) = 141.49, p < .001, \eta^2 = .94$, but there were no significant effects for evidence type, $F(1,36) = 2.07, p < .05, \eta^2 = .18$, or any interactions $F(4,36) = 2.62, p < .05, \eta^2 = .20$. Follow up t -tests ($p < .05$) on the mean percentages indicate that the percent of information produced by each question type was significantly different; where a majority of the information was generated by open questions ($M = 72.22; SD = 12.11$), followed by yes/no ($M = 16.60; SD = 8.53$), closed ($M = 6.75; SD = 4.87$), forced choice ($M = 3.30; SD = 2.62$), and leading questions ($M = 1.07; SD = 0.93$).

Use of cognitive interview components in the interview and live evidence

Only police interviewers used the cognitive interview techniques. Of note, nearly all interviewers used or partially used ‘free report’ (fully $N=8$; partially $N=2$), ‘report everything’, ‘sketch plans’(both fully $N=7$; partially $N=2$), ‘transfer control’(fully $N=6$; partially $N=3$), ‘encourage concentration’, ‘witness compatible questioning’(both fully $N=4$; partially $N=4$) and ‘mental reinstatement of context’(fully $N=2$; partially $N=6$). The ‘don’t guess’ instruction was only partially used by five interviewers. Also, ‘imaging’ and ‘change of perspectives’ were used fully by two interviewers and ‘change of order’ by none.

Consistency of response details between the interview and live evidence

Next, an analysis was conducted to determine how consistent the details in live direct evidence were with the interview. For this analysis the total number of details available to be recalled was not known so percentages were not used. These data are displayed in Table 4.2. A 5(consistent/omission/distortion/contradiction/new) X 5 (action/verbal/cognition/emotion/surround) ANOVA with repeated measures on the second factor was conducted on the number of details provided. A significant main effect was found for both consistency $F(4,36) = 16.23, p < .001, \eta^2 = .64$, and detail type $F(4,36) = 12.70, p < .001, \eta^2 = .59$. Follow-up t -tests ($p < .05$) on the mean number of details indicate that, except for contradictions and distortions, all other consistency types were significantly different to each other. Omissions were most common followed by consistent and new details. Distortions and contradictions were least common. Follow up t -tests ($p < .05$) on the mean number of details indicate that each detail types was significantly different to each other except for verbalizations and cognitions, and, emotions and person/object descriptions. Physical action details were most frequent followed by both verbal and cognition details. Emotion and person/object description details were least frequent.

These main effects were however qualified by a significant Consistency X Detail type interaction, $F(16,36) = 8.29, p < .001, \eta^2 = .48$. This interaction is shown in Figure 4.2. Several follow-up t -tests were significant. Broadly speaking there were significantly *less consistent* cognition details than physical and verbal, which were most common overall. There were however significantly *more omitted* cognition details than emotion and surrounding, which were least common overall. Together, these findings

suggest cognition details are omitted in live evidence proportionately more than all other types of details.

Table 4.2

Means and (standard deviations) for number of details by type and consistency of live evidence with the interview

Detail		Physical action	Verbal- ization	Cognition	Emotion	Person/ Object	Total
Consistent	<i>M</i>	91.30	37.90	10.60	6.20	12.00	31.60
	<i>SD</i>	(53.20)	(30.62)	(5.54)	(5.22)	(7.20)	(16.87)
Omission	<i>M</i>	184.80	104.00	79.20	26.60	23.90	83.70
	<i>SD</i>	(163.51)	(100.74)	(50.26)	(30.63)	(19.60)	(63.41)
Distortion	<i>M</i>	4.40	3.70	0.30	0.70	0.50	1.92
	<i>SD</i>	(2.76)	(4.37)	(0.95)	(1.25)	(0.85)	(1.32)
Contra- diction	<i>M</i>	6.30	0.40	0.90	0.30	0.20	1.62
	<i>SD</i>	(8.19)	(0.97)	(1.66)	(0.95)	(0.63)	(1.86)
New	<i>M</i>	17.30	11.20	7.00	3.90	1.80	8.24
	<i>SD</i>	(12.68)	(12.33)	(7.56)	(3.35)	(2.44)	(6.26)
Total	<i>M</i>	60.82	31.44	19.60	7.54	7.68	
	<i>SD</i>	(44.59)	(26.67)	(10.99)	(7.20)	(5.55)	

Of note, omissions in one case resulted in the defendant being discharged without conviction on six indictments when the complainant failed to recall the related events.

Reasons for not applying to use the interview as evidence

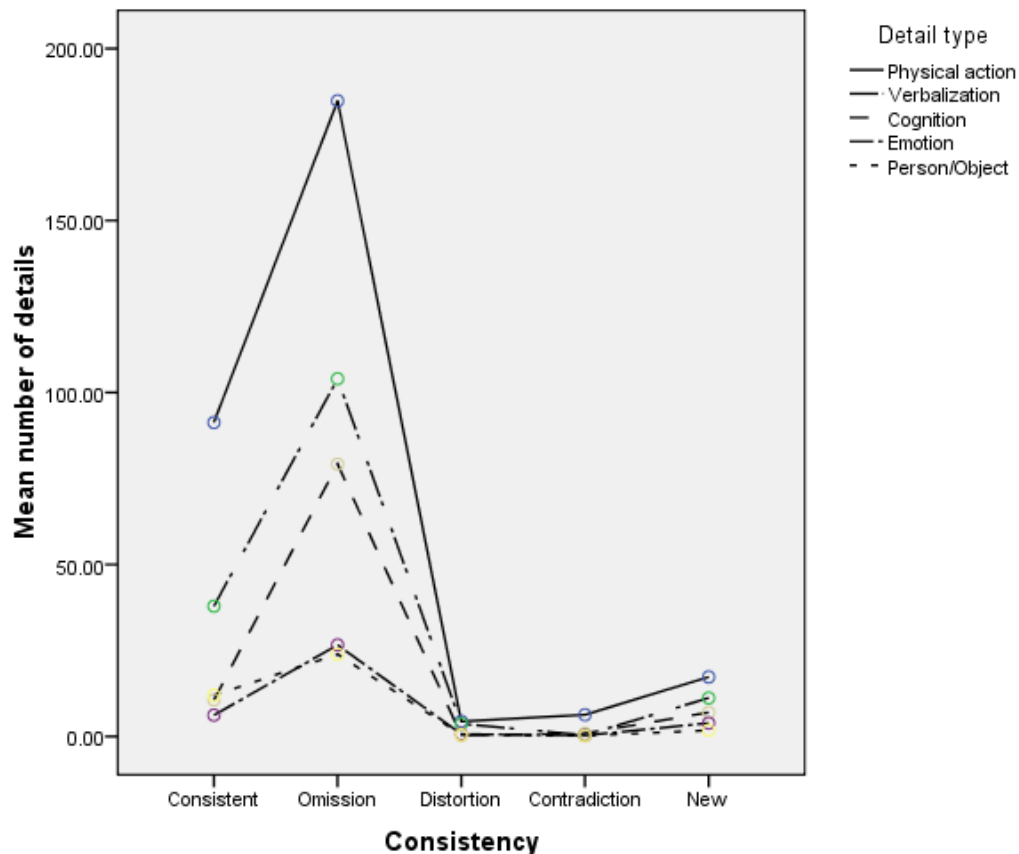
The large amount of information omitted at trial leads to the question of why prosecutors did not apply to use the video as evidence. The themes of prosecutor's responses to this question ($N=9$) were as follows¹⁹: the video was too long or not chronological ($N=3$); live evidence was preferred ($N=2$); there was no video (although there was; $N=2$); the complainant did not want pre-recorded evidence ($N=2$); the complainant was mature and confident ($N=1$); and the video did not meet regulation requirements ($N=1$). To explore the concerns about length, we conducted a *t*-test to compare the mean length of the interview which was available for seven interviews

¹⁹ Some prosecutors provided more than one explanation hence the responses total more than nine.

($M=124.42$ minutes, $SD=76.28$) and live direct evidence ($M=90.43$, $SD=48.84$). No significant differences were found ($p<.05$).

Figure 4.2

Mean number of details by type and consistency of live evidence with the interview



Discussion

We found that jurors received a third less of the details central to establishing the alleged offending than they would have with pre-recorded evidence. This dramatic loss of information was consistent across physical actions, verbalizations, emotions but especially the case for cognitions. As previously discussed, research suggests that as a general proposition delay is detrimental to recall (*e.g.*, Read & Connolly, 2007), so the small number of distortions and contradictions found between live evidence and the interview suggest that information accuracy was also reduced. Hence our findings are consistent with our predictions and suggest that live evidence reduces both the completeness and accuracy of complainant testimony.

The varying questioning strategies and interview techniques used by prosecutors and police are also likely to contribute to the changes in recall found. Although, they

have not been directly compared, the results are consistent with previous findings and as expected, both groups used more closed than open-ended questions (e.g. Clarke & Milne, 2001; Kebbell et al., 2003). Of concern, the popularity of open questions, which tend to produce higher accuracy responses, was equivalent to the very narrow closed less reliable 'yes/no' questions (see Milne & Bull, 1999). However, unlike the studies mentioned above, to examine how each question functioned we also measured response length. Promisingly, open questions elicited the majority of information both during the interview and in evidence. Despite the similar questions used, as predicted, interviewers elicited longer responses than prosecutors did to all question types. This effect was most pronounced with open questions, which produced more than five times the amount of information in the police interview compared with court testimony. Both the common use by police of CI techniques and the desire of prosecutors to control the complainant are likely to contribute to these differences (Memon et al., 2010; Powell et al., 2010).

The quick fire questions and answers may interrupt the concentration of the complainant resulting in less elaborate recall and a reduced accuracy (Fisher & Geiselman, 1992). The control exerted on the complainant is likely to restrict their answers to information requested by the prosecutor (Kebbell et al., 2003). The positioning of the questions may also train the witness to provide certain types of responses (see Fisher & Geiselman, 1992; Griffiths, Milne, & Cherryman, 2011). The CI encourages free narrative responses about the event early in the interview (Fisher & Geiselman, 1992). In contrast, advocacy guidance recommends building a story for the jury by commencing testimony with short answer questions that break down background information into individual details (Evans, 1992). Later during testimony, when more detail is desirable to describe the actual offending, the previous use of short ended questions may have conditioned the complainant to provide short responses. Useful information that is not requested is therefore potentially missed. The longer responses of complainants to the frequently used yes/no questions when compared to specific closed questions suggest that they do have more information to give than the questioning intends.

Together our findings suggest that the use of live evidence may limit the juror's ability to make good decisions. The loss of information and reduction in accuracy is likely to weaken the probative value of the testimony and the opportunity for corroboration with other evidence. The complainant is also left open to potentially damaging cross-examination that accentuates any differences between live evidence and

the interview and may discredit their entire testimony. As demonstrated by the present study, in its most extreme, the complainant may fail to recall the actual offence and the defendant will be discharged without conviction. Of course, a failure of this magnitude only occurred in one case. Consistent with previous research, more prevalent was the loss of fine grain detail (*e.g.*, Begg & Wickelgren, 1974; Powell et al., 2005).

The type of detail that is lost may lead to a missed opportunity to negate biases that operate against the complainant around the ‘real rape’ template (*e.g.*, Tempkin & Krahé, 2008). Worryingly, after suffering the greatest loss, cognitions were virtually non-existent in live evidence. A complainant’s appreciation of their own response may offset myths about their own counter-intuitive behavior. For example, that the complainant complied because due to prior experience she believed that resisting the sexual assault would result in even more violent behavior. Indeed a case construction approach to prosecuting sex offences recommends introducing such testimony (Ellison, 2007; Kebbell & Westera, 2011). We cannot say for sure why the loss of cognitions was more extreme than other detail types. Perhaps closer to the time of offending this type of information is more likely reported because the complainant is actively rationalizing their own behavioral response, in a similar vein to what jurors later do (Lees, 2002). An emphasis in the formal environment of the court room to ‘stick to the facts’ may further discourage this more personal information.

In the interview the extra details about what was said may also reduce ambiguity around the issue of consent. For example, the complainant reporting dialogue from a conversation with the defendant about her not wanting to have sex is likely to more clearly demonstrate the defendant’s awareness of a lack of consent than a short “I told him I didn’t want to”. Emotional details such as the complainant’s distress or fear and her perceptions of the defendant’s anger or other emotions could also make the testimony more convincing (*e.g.* Dahl et al., 2007). As too may details about any physical resistance offered and gruesome details around the actual sexual acts (Bright & Goodman-Delahunty, 2006; Wells & Leippe, 1981).

There are limitations to the present study. Firstly, the statistically significant effects had to be substantial to be revealed with such a small sample but other less substantial effects may have been missed. Secondly, transcripts do not capture demeanor such as displayed emotion, which has a strong positive effect on credibility judgments (Dahl et al., 2007; Kaufmann et al., 2003). Interestingly, both police and prosecutors perceive that one benefit of pre-recorded evidence is heightened emotion at

the time of interview when compared to trial (Westera, Kebbell, & Milne, 2011a, in press). This is an important area for future research. In this regard, it is also worth noting that identity was seldom an issue in this study, which suggests that memory for actions and interviewing strategies to elicit this type of information is also an important focus for future research.

Taken together the results raise the question of why prosecutors seldom apply to use pre-recorded evidence? Consistent with previous research, in the present study prosecutors expressed concern that the interview is less impactful than live evidence due to both the medium and interview format (Criminal Justice Joint Inspection, 2009; Stern, 2010; Westera et al., in press). Empirical research has examined these issues to some degree. Some studies suggest video medium may detract from witness credibility judgments (Goodman et al., 1998; Landstrom, Granhag, & Hartwig, 2005; Swim, Borgida, & McCoy, 1993) and others do not (Kemp et al., 1986; Miller, Bender, Florence, & Nicholson, 1974; Taylor & Joudo, 2005). However, none of these studies vary evidence content, so are not comparable to real life differences.

Less is known about how the differences in content affect evidence impact. Specifically, concerns are that the interviews are too long, lack logical order and are sometimes rambling (Criminal Justice Joint Inspection, 2009; Stern, 2010; Westera et al., in press). Anecdotally, poor interviewing practice has been cited by judges, prosecutors and those reviewing special measures as the cause of these concerns (*e.g.*, Stern, 2010). The difficulty in developing and maintaining interviewing skills suggests this may be a real issue (see Powell et al., 2005). Nevertheless, a systematic analysis suggests the contrast between CI and prosecutor expectations of more controlled examination may actually underlie these concerns (Westera et al., in press). One of the few studies to examine how the CI affects credibility judgments by Fisher, Mello and McCauley (1999) compared judgments about an audio recorded CI with a standard interview. No differences were found in student credibility ratings. These interviews were however only 15 minutes long, far shorter than real life interviews that are criticized for length. If long narratives in the interview make the testimony more complex and cognitively demanding to process, jurors may more readily rely on heuristic rather than systematic processing to the detriment of effective decision making (Chaiken & Eagly, 1976; Chaiken, Liberman, & Eagly, 1989). Then again, the complainant spontaneously giving information in free narrative format may more closely resemble a story narrative and hence also be more convincing (Pennington &

Hastie 1986, 1993; Snow, Powell, & Murfett, 2009). Future research needs to explore these possibilities.

The sluggish response to use pre-recorded evidence by prosecutors may also be a response to the broader phenomenon seen when some organizations change practices (for a review see Armenakis & Harris, 2009). The present study may illustrate a widely held assumption that a mature and confident adult is capable of giving live evidence accurately and wholly. The value therefore placed on pre-recorded evidence is diminished. Similarly, this assumption is apparent where the focus of the justice system when using pre-recorded evidence, is to reduce the trauma of the process for adult complainants, rather than to enhance the quality of the evidence given (Mahoney et al., 2007; Stern, 2009). Like with children, concerns raised about the use of pre-recorded evidence may main remain largely unsubstantiated (see Davies, 1999). For example, our finding that direct evidence was on average three quarters of the length of the interview in time but that two thirds of the information is lost, the returns for this small amount of extra time are high. Also, in the present study, two prosecutors reported that the complainant did not want to use pre-recorded evidence. Although this reason may be valid, complainants report they want the option of using their video as evidence (Burton, Evans & Sander, 2006; Hamlyn, Phelps, Turtle, & Sattar, 2004), but that they are seldom given this as an option and sometimes are actively discouraged from doing so (HMCPSI & HMIC, 2002; Kingi & Jordan, 2009). Furthermore, a reticence to change may mean prosecutors are not motivated to spend the extra time required to review the interview and make applications for alternative ways of evidence. Supporting this view, studies suggest prosecutors tend to rely on police summaries rather than reviewing the interview itself (Baldwin & Bedward, 1991; HMCPSI & HMIC, 2002). A lack of awareness that the video existed by two prosecutors in the present study suggests that they had not actively explored the possibility of pre-recorded evidence when reviewing the case file. This failure by prosecutors to review interviews erodes an opportunity for them to recognize its persuasive value. Finally, it is important to note that prosecutors rate accuracy, detail and completeness as three of the most important features of rape complainant testimony, and that they perceive these features as enhanced with pre-recorded evidence (Westera et al., in press). It is however unlikely that they are aware of the extent of the information lost in live evidence because this was until this paper not reported.

Conclusion

Our findings suggest that pre-recorded evidence provides a real opportunity to improve the quality of information available in rape trials and the criminal justice system more generally. If reliability and completeness of testimony are necessary for a fair and reasonable criminal trial then fundamental assumptions about how testimony is given need revisiting.

Chapter 5: General discussion

In this chapter the contribution of the doctoral studies are synthesized and discussed in relation to previous research and theory concerning improving outcomes in rape cases. The limitations of these findings are also outlined. Recommendations resulting from the findings are made for improving practices with reference to policy makers, the police and prosecutors. Finally, suggestions for future research are discussed.

Summary of findings and theoretical implications

The purpose of the present thesis was to explore how using video recorded evidence may improve the quality of information rape complainants provide and thereby outcomes in rape cases. Three empirical studies, each targeting a key phase of the criminal justice process were used to examine this research question. To recap, the views of both police and prosecutors are important as they are both gate keepers who decide whether a reported case proceeds to prosecution. The ability to use the video as evidence also depends on the police video recording the interview in preference to the usual method of preparing a written statement. Hence, the first study examined the perceptions of police officers involved in sexual assault investigations about video recording adult rape complainant interviews. In addition to their gate-keeping role, prosecutors decide whether to make an alternative way of evidence application to use pre-recorded evidence. Study two therefore examined prosecutor perceptions of using the video as evidence. In the third study a within subjects design compared the investigative interview of the complainant with their live evidence at trial in real rape cases. The content, questioning and interview format of the complainant's account were examined. Next, the main findings of these studies are synthesised into themes and re-examined in more detail in relation to previous research findings and theory.

Completeness, detail and accuracy of complainant testimony

The findings were that both police officers and prosecutors rated accuracy, detail and completeness as three of the most desirable traits of the complainant's account for both investigations and evidence. In addition, the most commonly cited benefit of the video recorded interview was the enhancement of these traits. These perceptions were validated when the actual differences between the interview and live direct evidence were examined. Over two thirds of the information elicited in the interview that is central to establishing the offending was omitted from live evidence. The small number of inconsistencies found between the interview and live evidence also suggest reduced accuracy of the latter (*e.g.*, Powell et al., 2005; Read & Connelly, 2007). In addition, the findings suggest that the type of information lost in live evidence such as cognitions, verbalizations, physical actions and emotions may make complainant testimony less convincing. This is because these types of details may be vital in negating the issue of consent and explaining counter-intuitive behaviour (Ellison & Munro, 2010; Schuller et al., 2010; Tempkin & Krahé, 2008). The changes to information provided by the

complainant are consistent with the effects of memory decay over time (*e.g.* Ebbinghaus 1913; Gabbert et al., 2003; Loftus & Palmer, 1973; Rubin & Wenzel, 1996) and the different questioning (*e.g.*, Hutcheson et al., 1995; Lipton, 1977) and interviewing methods used (*e.g.*, Köhnken et al., 1999; Memon et al., 2010) by police and prosecutors.

These findings clearly indicate that with live evidence jurors do not receive the most complete and reliable version of events available from the complainant. The central role of the complainant's testimony suggests that these negative effects may weaken the prosecution case and provide the defence with additional means of discrediting the complainant. Hence, in this doctoral thesis it is suggested that pre-recorded evidence provides a genuine means of increasing legitimate convictions in rape cases.

Of interest, quality of information is important to prosecutors, so why has this study and others found that prosecutors are reticent to use pre-recorded evidence (King & Jordan, 2009; Stern, 2010)? Revisiting this question in more detail, the implementation of pre-recorded evidence with children may provide some insight into why this is the case. There is a long history of concern about the reliability of child testimony (for a review see Goodman, 2006). Indeed, prior to the 1980's children were seldom deemed competent to give evidence and cases were rarely tried (Goodman, 2006). Hence, preserving a fresh account to enhance the completeness and reliability of testimony was one of the reasons why Pigot recommended the introduction of pre-recorded evidence for children in England and Wales (Advisory Group on Video Recorded Evidence, 1989). Despite this potential motivation to improve practice, obstacles were readily identified as to why pre-recorded evidence was ineffective or unfair. For example, concerns included the reduced ability to draw inferences from the child's behaviour, that reduced stress may negatively affect the child's testimony and, familiar with adults, that video medium reduces evidence impact (Davies, 1999). Most of these concerns remain unsubstantiated and pre-recorded evidence is now commonly accepted practice for children in those countries that have introduced similar measures for adults. This history suggests that a reticence to adapt to change, common to many groups, may be a contributing factor to the slow-uptake of pre-recorded evidence with adults like with children before them (see Armenakis & Harris, 2009). Indeed, a review of the investigation and prosecution of rape cases noted that the judiciary and the bar considered the video medium reduces testimony impact for adults, but that it was no

longer cited as an issue for the pre-recorded evidence of children (HMCPSI & HMIC, 2002). No clear reasons were given why adults are different, suggesting these reasons may be symptomatic of a reticence to change.

Unlike the awareness and sometimes overestimation of concerns about the reliability of children (see Goodman, 2006; Granhag, Strömwall, & Hartwig, 2005), research suggests that justice sector professionals are generally unaware of factors that may affect eyewitness testimony in general (Benton et al., 2006; Granhag, et al., 2005; Kebbell & Milne, 1998; Wise, Pawlenko, Safer, & Meyer, 2009). For example, Granhag et al (2005) found prosecutors, judges and police officers all showed limited awareness of the heightened rates of forgetting immediately after an event. Hence, although prosecutors may perceive the video enhances forensic quality of adult evidence, as previously discussed, they may be unaware of the extent of the improvements that were until now unknown. There may therefore be even less motivation to change attitudes away from a preference for traditional oral evidence than there was with children.

This situation may be exacerbated by prosecutors previously relying on the incomplete and unreliable written statement or a document derived from it as a guide to elicit testimony (*e.g.* Heaton-Armstrong & Wolchover, 1992; Lamb et al., 2000; Rock, 2001). Police officers are not experts in presenting testimony, thus when filtering relevant information to include in the statement they may miss information that is potentially useful to the prosecutor for case construction. Therefore the reliance of prosecutors on these documents (Heaton-Armstrong & Wolchover, 1992, HMCPSI & HMIC, 2002) may mean that they are unaware of the potential to glean this additional information from the complainant. This lack of awareness may mean the benchmark for effective direct evidence is far lower than actual events would allow.

Interview and questioning methods

Findings provided in this doctoral thesis also offer insight into the importance of how different questioning and interview strategies may influence testimony and perceptions thereof. Firstly, it is important to note that police perceived that having a transparent record of the interview was one of the benefits of video recording. This was because jurors are able to see the actual words the complainant used and how the information was elicited. However, if interviewing was poor, this feature was also perceived as a disadvantage by both police and prosecutors, as it was considered this may be detrimental to complainant credibility judgments. Likewise, both groups ranked poor questioning methods as the least desirable characteristics for both investigations

and evidence. These findings are supported by the behaviour of both police and prosecutors. Both groups rated the mock rape transcript of the complainant's account as less accurate, credible and that they were less likely to charge or recommend charges when questioning was poor. These findings suggest that these professional groups have a good understanding of how poor questioning can affect information quality and perceptions of quality (also see Griffiths et al., 2011). Although unable to be determined by the current research, previous studies suggest this may be particularly relevant when leading questions are used (see Castelli et al., 2005; Kalra & Heath, 1997; Ruva & Byrant, 2004), rather than closed questions (Ruva & Byrant, 2004). Maintaining high standards of interviewing by avoiding leading questions is therefore essential if pre-recorded evidence is to be used effectively, a matter discussed further later.

An important finding in this thesis is that both police and prosecutors rated open questions as most desirable. A view supported by research findings that suggest these types of questions are most reliable and productive (see Powell et al., 2005). Of note, when police and prosecutorial questioning strategies in actual cases were compared both police and prosecutors were found to use closed questions more frequently than open questions (*e.g.* Milne & Bull, 1999). These findings are consistent with previous research that separately examines the questioning behaviour of each group (Clarke & Milne, 2001; Clifford & George, 1996; Dando, Wilcock, & Milne, 2009; Kebbell et al. 2003, Zajac & Cannon, 2009). However, in the present study open questions generated the majority of information for both groups, suggesting questioning strategies are not as poor as this previous research suggests. A limitation to previous research that examines questions in isolation of the response given is that the interview is an interactive environment between the interviewer and the witness (Griffith & Milne, 2006; Gudjonsson, 2003; Oxburgh, Myklebust, & Grant, 2009). Each person is influenced by the others behaviour. The types of questions asked may therefore depend on the type of response given. For example, a detailed narrative generated by an open question may quite appropriately be probed with several closed questions for clarification. Scrutinised by question type alone this may give the impression the interview is dominated by closed questions, when in reality most of the information was generated by open questions. Social dynamics operating in the interview environment may also explain why police interviewers elicited far longer responses to all types of questions, but to open questions in particular. If the interviewer allows the witness to answer an open question without interruption the witness may be encouraged continue to talk in detail

(Griffith & Milne, 2006; Milne & Bull, 1999). This is especially likely if also prompted by an explicit instruction to provide detail as recommended by the CI (Fisher & Geiselman, 1992).

The longer responses found in police interviews coupled with prosecutors' concerns about narratives suggest that prosecutors' preference for open questions depend on the degree of openness (Evans, 1995; see Powell & Snow, 2007). In other words, open questions that elicit sound-bite responses are perceived as desirable, but ones that elicit long free narratives are not. This may be due to the perception that coherence is also important for presentation reasons and that a jury will switch off if the responses are too long (see also Davis et al., 1999; Powell et al., 2010). The effectiveness of longer narratives on juror perceptions appears to be the most contentious issue as to whether one interview can meet both investigative and evidential purposes, as the desirability of most other characteristics were found to be similar. Indeed this feature emphasises the role of prosecutors to not only provide testimony that is of a high forensic value, but also to ensure only relevant information is presented in a persuasive way to a jury. The perception that long narratives are detrimental to impact appears to be largely based on practitioner experience rather than empirical research, and, as discussed later, future research should examine this issue.

Another incentive to keep answers short is to prevent inadmissible evidence being rendered and a mistrial occurring (Evans, 1995). Although this may be relevant to live evidence, one of the benefits of pre-recorded evidence is inadmissible evidence can be agreed on before trial and removed from the record reducing the likelihood of a mistrial. Despite these differences, the 'tried and true' approach may still inform prosecutor expectations about what good questioning looks like.

That previous studies attributed the concerns about interview format to poor police interview (*e.g.* Criminal Justice Joint Inspection, 2009; Stern, 2010) could in part be due to unfamiliarity with police adult witness interviewing procedures. Police have only recently begun to video record adult witness interviews (see Schollum, 2005; 2006). In terms of exposure to police practices, prosecutors are likely familiar with child witness and suspect interviews that in many countries have been video or audio recorded for over twenty years (see Schollum, 2005). The more limited cognitive and verbal ability of children and the interviewer-controlled focus of suspect interviews are likely to result in an interview product more similar to prosecutor elicited testimony (Hutcheson et al., 1995; Powell et al., 2005; Shepherd, 2007; Soukara et al., 2009).

Therefore prosecutor's exposure to the adult witness interview format for the first time may be inconsistent with their expectancies not just of their own interviewing style but other police interviews.

Whatever the case, research suggests that the restrictive questioning used by prosecutors is likely to contribute to the reductions in quantity and quality of information found in live evidence (see Powell et al., 2005). Encouraging short responses is likely an obstacle to the goal of complete, accurate and detailed information from complainants. The use of pre-recorded evidence to one side, if these features are truly benchmarks of effective testimony, prosecutorial questioning strategies may need revisiting. Together the findings of this doctoral thesis have tangible implications for practice and lay a strong foundation for future research. Before examining these areas further, the limitations of these studies are discussed.

Limitations

The main limitations are revisited here, but for more detail refer to each related chapter. In the first two studies, the low response rates to the questionnaire means that professionals who are more motivated to improve the investigation and prosecution of rape cases may have self-selected into the sample. This may mean the results are more representative of those open to change rather than the general policing or prosecutorial population. Although, it is worth noting that the response rates are similar to those in other studies whose participants are professionals working within the justice sector (*e.g.*, Ask, 2010; Kebbell & Milne, 1999; Nield, Milne, Bull & Marlow, 2003).

The controlled experimental design was used in the first two studies to isolate the questioning and interview format variables and in doing so examine how these variables directly affect judgements about accuracy, credibility and decisions to charge. This experimental control masks some of the real life differences in these conditions. For example, open questions are likely to elicit longer responses and more information, but the experimental design did not include these features as they may also systematically affect decisions about accuracy. Another limitation is that the use of abridged mock transcript excerpts may make the professionals studied more sensitive to the questioning format. Using entire records of the interview or including other evidence may overwhelm these effects. For example, if these additional features make the evidence more complex, police and prosecutors may more heavily rely on heuristic rather than systematic processing of the information thereby reducing the influence of question type (Chaiken & Eagly, 1983). However, it is important to note, that in a

review of mock jury research, Bornstein (1999) found that the use of abridged transcripts did not generally affect the generalizability of juror judgments when compared to more lifelike experimental conditions. This may be even more so with police and prosecutors who, unlike student participants, have complete access to the full transcript and can review it on multiple occasions.

In the third study, the small sample size may mean the findings are not representative of the general population of rape cases. Although the effects detected are clearly strong, there is also an increased chance of a type two error, in that some effects may not have been detected (see Cohen, 2003). If the unique opportunity created by the timing of this study repeats itself, replication with a larger sample could alleviate these problems.

The high ecological validity of the study three archival study comes at the expense of experimental control. This means that the ‘ground truth’ of what actually happened during the event could not be established. As such, it is unknown whether the complaints were genuine or not. Another disadvantage of a field study of this nature is that the lack of experimental control means that causal mechanisms cannot be determined. As previously discussed from robust research findings we can infer that the effects of delay on memory, the different questioning and interview strategies used, and stress are all likely to have contributed to the differences in information found (*e.g.* Powell et al., 2005; Read & Connelly, 2007; Memon et al., 2010). However, the extent to which each of these variables contributed to the differences or interacted with each other can only be established with more experimental research.

Despite this, Cutshall & Yuille (1989) argue that laboratory studies are not necessarily comparable with real life experiences of crime. For example, the level of arousal associated with a real crime is seldom present in the laboratory. Of interest, most eyewitness field studies to date deliberately use crimes that are not representative of real crimes (Christianson & Hubinette, 1993; Cutshall & Yuille, 1989; Haber & Haber, 1998; Yuille & Cutshall, 1986, 1989). This is because typical crimes involve the complainant as the only witness, so in order to deduce the ground truth crimes where there is evidence from multiple sources are selected. A strength of study three is therefore that it offers a unique insight into a complainant’s recollection of traumatic events over time. Of further interest, that identity was seldom an issue highlights that memory for actions in particular is an important focus for future memory and interviewing research.

Recommendations for practice

Government policy makers

To my knowledge, the ability to use pre-recorded investigative interviews as evidence for adults is currently only available in New Zealand, England, Wales, Northern Ireland, Norway and the Australian state of North Territory (Australian Law Reform Commission, 2010; Criminal Justice System, 2007; Mahoney et al., 2007; personal communication with Superintendent Rygh Norway Police Service). One obvious step is for other countries to introduce similar legislation so, when preferred, they too can benefit from the more complete and accurate testimony that pre-recorded evidence is likely to provide. In this regard it is important to note that some countries where this mode of evidence is available, have or are putting in place measures to address the reticence to use pre-recorded evidence found in this thesis and other studies (Stern, 2010, Kingi & Jordan, 2009). In New Zealand a recent discussion paper by legal academics McDonald and Tinsely (2011) recommends amendments to the Evidence Act so that the prosecution must seek directions as to how the complainant should give evidence in every sexual case. They argue this position is preferable to a presumption in favour of pre-recorded evidence, which can become convoluted when the complainant prefers live evidence and the prosecutor must make an application to do so. England and Wales have gone a step further and from late 2010 all adult complainants of serious sexual offences automatically had the right to use their video as evidence (See Government Equalities Office, 2010). What difference this change has made has not yet been examined.

Rather than just relying on more general sexual assault reviews, the response of the justice sector could be further enhanced by a robust evaluation framework that examines both the implementation process and outcomes specifically for pre-recorded evidence. Davies et al's (1995) evaluation of the introduction of pre-recorded evidence for children is an exemplar for what this might involve. This evaluation examined the impact of the legislative changes for both children and case outcome, the degree to which the changes were implemented, and the adherence of interviews to best practice. Judges, barristers and child protection professionals were surveyed about the impact of the changes both prior to and after experiencing the changes. Children were asked their views about the experience of using pre-recorded evidence. Case outcomes, interviews and supporting documents, and the child's demeanour when giving evidence were all systematically examined. As a promising means of improving outcomes for rape cases,

investing in a similar evaluation with adult rape complainants could pay dividends. Doing so may improve the process and outcomes of that process, and will also enable shared learning with other countries.

One risk of not conducting such an evaluation is that changes to practice are driven by anecdotes. For example, based on the opinions of some barristers and judges the recommendations of the Stern Report (2010) relating to pre-recorded evidence focused solely on improving police interviewing practices. As a result of this recommendation one police force in England is piloting a new interviewing approach to gain more eventually relevant information that is more ‘fitting’ for the judicial process (Government Equalities Office, 2010). Positively, this shows a desire of the police to improve the process; however there is a risk that the police are misled by concerns that were not systematically examined until this current doctoral thesis. The findings of which suggest concerns about police practice may also result from adherence to methods that are proven to produce the most complete and accurate information. Police do need to invest in quality interviewing, but attempts to shorten question responses and decrease the length of the interview to appease justice sector practitioner’s expectations of more controlled testimony may be detrimental to effective outcomes in investigations. Given that currently on average around only 30% of rape cases reported to police result in prosecution, this is a risk the justice sector can ill afford to take (Daly & Bouhours, 2010; Triggs et al., 2009).

The findings this doctoral thesis suggest that the completeness and accuracy of pre-recorded testimony is far superior to that of live evidence. Until now, the focus of pre-recorded evidence with adults was to reduce the stress of testifying and thereby improve the process for the complainant (Stern, 2010). Together with other research findings, the present research suggests that there is a reticence to depart from traditional live evidence practices (Criminal Justice Joint Inspection, 2009; Stern, 2010). For example Stern surmises:

Whilst the concept of achieving best evidence by conducting a video-recorded interview was warmly supported by the judges we spoke to, there were doubts about practice and the need to use the recording method so widely... It was suggested that cases might be prosecuted more successfully if some complainants could give their live evidence with the protection of screens. Many judges believe that live evidence has more impact on juries (p.90).

Just how pre-recorded evidence can be both ‘warmly supported’ but also ‘overused’ is unclear. Whatever the case, educating justice sector practitioners about how pre-

recorded evidence may improve the accuracy, completeness and convincingness of testimony, and why interviews are in an unfamiliar format may assist with changing attitudes.

The broader implications of the current research findings may mean that it is appropriate to extend the use pre-recorded evidence to other types of cases. For example, as evidenced by the two complainants in the present study who were later declared hostile, family violence complainants and other intimidated witnesses. Indeed, in New Zealand the Evidence Act (2006) is broad reaching and two of the criteria the judge must consider are likely intimidation of the witness and the nature of the relationship to the witness with any other party involved in the proceedings. Playing the video as evidence in these types of cases may allow tribunal of fact to consider the original account given by the complainant in addition to their later testimony that may be tainted as a result of intimidation.

Police

The present findings also suggest that if the wider justice system and complainants are to benefit from pre-recorded evidence quality interviewing by police is vital. Suggestive questioning may not only detract from investigators and prosecutors perceptions of complainant credibility, but also jurors (Castelli et al., 2005; Ruva & Byrant, 2004). The difficulty in developing and maintaining witness interviewing skills is well documented (for adults see Clifford & George, 2006; Clarke & Milne, 2001; Fisher et al., 1987). Police therefore need to invest in a robust training programme to ensure interviews are of the highest quality. To this end, Powell et al. (2005) suggests key features include spaced training over sessions, expert instruction and feedback, exemplars of good practice, and participant motivation. Additionally, after evaluating the British 'PEACE' interview training programme, Milne & Clarke (2001) recommend that only a select number of highly trained specialists should conduct these serious crime interviews with their performance measured against clear criteria. The New Zealand Police have implemented a regime incorporating these features (NZ Police, 2008; Schollum, 2006). Evaluation of this and similar schemes are required to determine if they are working effectively, good practice is being adhered to and lessons learnt are shared.

Both investigators perceive and the research suggests that written statements undermine both the quality and quantity of information in the interview record (*e.g.*, Lamb et al., 2000). An awareness of management that investigators identified

resourcing as a disadvantage to using the video may go some way to ensuring that infrastructure supports this more reliable and transparent method of recording (Shepherd & Milne, 2006). This includes dedicated interviewing facilities, interviewing equipment and most notably transcription facilities. Immediate supervisors need also know that the extra staffing required to monitor the interview is likely offset by the time saved composing the statement for both the interviewer and the complainant. Another benefit is that without the cognitively difficult task of having to remember what was said to produce a written statement (see Köhnken, 1995), the interviewer can more readily allow the complainant to control the flow of the interview. In addition to aiding more elaborate recall, this approach is consistent with allowing complainants to tell their story, be listened to and be believed (Fisher & Geiselman 1992; Powell et al., 2005). Features considered by them as determinants of a successful criminal justice process (Jordan, 2001; McMillan et al., 2009). By reliably preserving the interview on video more effective investigative and prosecutorial decision making is the likely payoff for the additional time spent reviewing the interview.

Mindfulness of interviewers that the video may be used as evidence and some minor changes to practice may alleviate some of the concerns about interview format. Given the importance of accuracy, completeness and detail to practitioners and effective resolutions, it would be remiss for any changes to interviewing practice to affect these features. Instead, some adaptations to current practice may make the interview more evidence friendly. For example, conducting rapport building off rather than on camera may reduce the length of the interview but not compromise interview process. Explaining some of the interview process such as the room set-up can also be done off camera. It may be useful to include the CI techniques such as report everything and transfer control on camera to prevent any issues arising about why the complainant is communicating in a way that is different to usual.

For the most part adherence to best practice may produce a sound evidential product. For example, the more cognitively demanding task of exploring the actual events in detail to be covered at the beginning of the interview (Fisher & Geiselman, 1992). After these topics are exhausted, more administrative details that are also important for the investigation are dealt with. Not only is this recommended practice but it allows the later part of the interview to be edited out if irrelevant to trial (see Criminal Justice System, 2010). Such details might include background, descriptions of the complainant's property, contact details, dates of birth and names of other witnesses.

Making the most of the complainant's fresh recall by exploring information from different sensory modalities is a CI technique that may help determine issues around consent and could also assist with case construction should a trial result (see Kebbell & Westera, 2011). For example, instructing the complainant at different times to report what they could hear, their emotions and cognitions, may reduce ambiguity around consent and negate myths around counter-intuitive behaviour. Towards the end of the interview, seeking explanations for any major evidential inconsistencies and omissions will not only assist with the investigation but cover issues that may later arise at trial (Milne, 2004). Reducing the need for supplementary direct evidence in this way may also assist with a prosecutor tactic known as 'stealing thunder'. With this tactic the prosecutor can reduce the impact of potentially discrediting information by introducing it themselves rather than waiting for defence to do so in cross-examination (Dolnik, Case, & Williams, 2003; Evans, 1995).

Prosecutors

Previously the written statement or a brief of evidence prepared from it was the benchmark of what direct evidence the complainant could give. This is no longer the case. Improved interviewing and recording methods now mean more information is available to bolster the prosecution's case. For the potential benefits of pre-recorded evidence to be realised in practice prosecutors need to make the time to review the interview rather than a summary, statement or brief of evidence (Baldwin & Bedward, 1991; HMCPSI & HMIC, 2002). As previously discussed, research suggests these documents prepared from the interview are seldom reliable and never complete (*e.g.*, Lamb et al., 2000). Therefore encouraging the production of these documents (see Criminal Justice System, 2010; Stern, 2010), sets the complainant up for cross-examination on these unreliable records as a prior inconsistent statement. Furthermore, police officers are not experts at presenting evidence. It is therefore likely that when police prepare these documents convincing information that may assist with case construction is lost (see Kebbell & Westera, 2011).

A benefit of reviewing the video rather than the transcript is that prosecutors can determine the persuasive value of the interview. Hence, what is seemingly a long rambling account in a transcript may actually be very convincing when viewed. It is also important to bear in mind that for jurors the novel experience of viewing the interview may make it more memorable than is suggested by the perceptions of prosecutors who deal with this type of information regularly (Bell & Loftus, 1985,

Reyes, Thompson & Bower, 1980; Taylor & Thompson, 1982). When reviewing the interview, inadmissible and irrelevant evidence in the interview can be identified and later edited out potentially reducing the length of the interview. The extra time spent on this pre-trial preparation and making alternative way of evidence applications may result in improved outcomes and less time spent overall.

Communication with police about particular concerns may help to improve the evidential value of the product. For example, in New Zealand discussions with police about prosecutor concerns about overly empathetic behaviour have led to emphasising what is and is not appropriate in this regard during interviewer training. This doctoral thesis suggests that the requirements for an effective investigative interview and the best evidence are not all that different. If prosecutors, police and interviewing experts collaborate together it is hopeful that one interview can meet both investigative and evidential purposes.

Suggestions for future research

The other defining shortcoming of adversary criminal procedure is its subordination of truth-seeking. Because adversary procedure remits to partisans the work of gathering and presenting the evidence, each side operates under an incentive to suppress and distort unfavourable evidence, however truthful it may be (p.103, Langbein, 2003)

The present findings suggest the using pre-recorded evidence enhances the quality of information received by a jury. However, within the adversarial criminal trial the relationship between actual and perceived accuracy is weak (Leippe, Manion & Romanczyk, 1992; Lindsay, Wells & O'Connor, 1989; Wells et al., 1979). More robust ecologically valid research is required to examine the question: how does pre-recorded evidence affect perceptions of complainant testimony? The experimental control offered by mock jury studies makes this type of methodology a good starting point. Now field research has provided a greater understanding about the differences between pre-recorded and live testimony, these studies can compare the real life differences. One obvious area within this research is how judgments about the free narrative format of questioning compare with the question and answer format used by prosecutors. Exploring how the type of information provided by the complainant interacts with the biases that operate around the 'real rape' template is likely another fruitful research topic (e.g., Tempkin & Krahé, 2008).

Adding the actual differences in testimony to experimental studies that examine the impact of testimony medium will help determine how the changes in testimony

weigh against or interact with any video medium effects. Another important area of research is how pre-recorded evidence affects cross-examination. For example, does defence counsel actually highlight the discrepancies between the interview and live evidence during cross-examination? If so, how does this affect juror credibility judgments? The limited number of prior inconsistent statements may cause defence may revert to other tactics to discredit the complainant.

The studies presented here did not examine whether the perception of police and prosecutors that the complainant is more emotional at the time of interview than at trial is valid. This is an important question because jurors rely heavily on emotion when making credibility judgments about sexual assault complainants. Namely, the closer the emotion to juror expectations the higher the credibility ratings (Dahl et al., 2007; Rose et al., 2006; Wessel et al., 2006). If the complainant is more emotional this may therefore increase her credibility. On the other hand the timeliness of the interview may heighten juror expectations that if not met may detract from credibility. These possibilities should be explored.

Finally, there is also a perception of both police officers and prosecutors that pre-recorded evidence improves the process for complainants. Reviews on special measures suggest complainants want the option of pre-corded (Burton et al., 2006; Hamlyn et al., 2004), but the research does not currently go beyond this. Future research should explore this further because even if the differences in credibility judgments are found to be negligible, an improved process for complainants is reason enough to increase the use of pre-recorded evidence.

Conclusion

The use of pre-recorded evidence provides a real opportunity to improve outcomes in rape cases. Not only is the completeness and accuracy of the complainant's testimony improved, but the types of details provided means a jury may find the video more convincing. Government agencies, justice sector practitioners and academics need to collaborate to ensure any improvements are given a real opportunity to influence outcomes. If these changes are successful, the wider justice sector needs to re-think fundamental assumptions about how other eyewitness testimony is given.

Appendix A: Promoting pre-recorded complainant evidence in rape trials:

Psychological and practice perspectives

Mark R Kebbell and Nina J Westera*

In this article, the authors, a forensic psychologist and police officer, explore how pre-recorded police interviews with complainants may be presented as evidence-in-chief and used to support the prosecution case for alleged rape offences. They discuss the advantages and disadvantages of pre-recording, and how its introduction will necessitate a profound shift in police culture and the conventional "case construction" model used by police. The article concludes by identifying the range of reforms to current police practice required to address some of problems associated with using pre-recorded evidence in rape trials.

INTRODUCTION

The investigation and prosecution of sex crimes has advanced considerably over the past 30 years in response to sustained and justified complaints, particularly concerning how the police and courts treat victims.¹ The purpose of this article is to outline ways in which prosecutions for alleged rape offences may be further enhanced with the provision of pre-recorded police interviews with complainants that can be tendered as evidence-in-chief. First, the authors outline some of the common challenges associated with prosecuting rape before presenting some of the advantages of pre-recorded evidence. Next, they discuss the impact of these innovations on police culture and in particular on case construction models, and identify some of the perceived drawbacks before identifying ways to enhance the forensic and evidential quality of pre-recorded evidence.

THE CHALLENGES OF PROSECUTING RAPE OFFENCES: 20 YEARS OF PROGRESS

A persistent criticism of rape prosecutions is that prosecution rates are low.² The recent Stern Review of the treatment of rape complainants by the legal system in England and Wales reported a conviction rate for rape of 58% for persons of all ages.³ Notwithstanding common claims in the media suggesting that the conviction rate for rape is as low as 6%, the Stern Review found that the available empirical data presented a very different profile of rape conviction which is "at least comparable with other offences where the jury has to establish a state of mind rather than a fact".⁴ This profile seems to apply in Australia. Justice Marcia Neave, a Victorian Court of Appeal judge,

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¹ For example, Kelly L, Lovett J and Regan L, *A Gap or a Chasm? Attrition in Reported Rape Cases* (Home Office, 2005); Lees S, *Carnal Knowledge: Rape on Trial* (The Women's Press, 1996). *The Stern Review: A Report by Baroness Vivien Stern CBE of An Independent Review into How Rape Complaints are Handled by Public Authorities in England & Wales* (Government Equalities Office, 2010) (Stern Review).

² For a review see Daly K and Bouhours B, "Rape and Attrition in the Legal Process: A Comparative Analysis of five Countries" (2010) 39(1) *Crime and Justice: An Annual Review of Research* 565.

³ Stern Review, n 1. These data were based on all prosecutions instituted in England and Wales between 2006 and 2008.

⁴ Stern Review, n 1, p 92.

former law reform commissioner and legal scholar, reported in a recent extra-curial address that although there are high rates of attrition, overall the rate of conviction for rape between 2005 and 2009 was about 50% in cases that went to trial in the County Court, noting that the rate had fallen to 38% in the past 12 months.⁵

That said, rape cases remain inherently difficult to prosecute for a number of reasons. When they are contested in court it is usually on the grounds that the complainant consented (or was believed by the defendant to have consented) to the sexual act.⁶ This means the jury has to decide between two opposing accounts and often has only the testimony of the complainant and defendant and the credibility of their respective accounts to rely upon. In most cases there is no supporting forensic evidence or other corroborative evidence that bears on the issue of consent or lack of consent. In some cases, it is the *threat* of violence (or other forms of coercion) rather than its actual use that procures compliance, which of course leaves no forensic trace.

A further obstacle is that many cases do not cohere with jurors' preconceived ideas about rape. For instance, the victim may not report the matter immediately, may not appear outwardly distressed and may have had previous, consensual sex with the defendant. These are all factors that do not fit well with jurors' beliefs about the circumstances of rape and may undermine the complainant's credibility.⁷ Indeed, many complainants are intoxicated by alcohol and drugs at the time of the alleged incident, a factor that can lead some jurors to believe complainants are partly responsible for what has happened to them. Alcohol may also impair the ability of complainants to recall what happened and impair their capacity to resist their attacker – factors which jurors tend to believe are inconsistent with lack of consent. (It should be noted that such prejudices operate notwithstanding the mandatory legal requirement in some jurisdictions, including Victoria, to direct juries that proof of physical resistance is not required, and that intoxication by alcohol or drugs negate free agreement or consent.⁸) Finally, jurors' beliefs about the frequency of false allegations may have an impact, if they believe the rate to be higher than it is, and this is a moot question, then they may be more likely to acquit than is warranted by the evidence.

When all the challenges associated with prosecuting rape cases are taken together, it might be thought that there is little room to increase conviction rates without increasing the risk of wrongful convictions through weak cases proceeding to trial, which is manifestly not in the public interest – as noted by the Stern Review. However, one method that may assist the prosecution to present the best evidence is the use of pre-recorded video evidence.

⁵ Farouque F, "Judge Calls for Sex Trials Rethink", *The Age* (8 September 2011). In 2004, Justice Neave chaired a major review of the law governing sexual offences: Victorian Law Reform Commission (VLRC), *Sexual Offences – Final Report* (2004).

⁶ See the Stern Review, n 1, noting that "The question with rape is not whether sexual intercourse took place and if the defendant was a participant. That is rarely what is being argued. The question is whether the complainant consented to sexual intercourse and the defendant reasonably thought he or she did"; see also Edwards J, "Medical Examinations of Sexual Assault Victims: Forensic Use and Relevance" (2003) 15(8) *Judicial Officers' Bulletin* 65; Konradi A, "Too Little, Too Late: Prosecutors' Pre-court Preparation of Rape Survivors" (1997) 22(1) *Law and Society Inquiry* 1.

⁷ See Lees, n 1; Temkin J and Krahé B, *Sexual Assault and the Justice Gap: A Question of Attitude* (Hart Publishing, 2008); Ellison L and Munro V, "A Stranger in the Bushes, or an Elephant in the Room? Critical Reflections Upon Received Rape Myth Wisdom in the Context of a Mock Jury Study" (2010) 13(4) *New Criminal Law Review* 781.

⁸ See Bronitt S and McSherry B, *Principles of Criminal Law* (3rd ed, Thomson Reuters, 2010) for a discussion of the reforms in Australia that introduce a positive consent standard, and the mandatory jury directions relating to absence of resistance.

Achieving best evidence in rape trials

A number of jurisdictions have enacted “special measures” for complainants in rape trials.⁹ These include measures such as making available dedicated victim support workers in the court, permitting complainant evidence to be given “in camera”, behind a screen or via closed circuit television, as well as allowing the use of pre-recorded video evidence. Whilst these measures are diverse the aims behind these reforms are consistent: to make the provision of the evidence less stressful; to enhance the forensic quality of evidence; and to make reports more likely. This article will focus on pre-recorded video evidence because this has, in the authors’ view, the greatest potential to satisfy these three aims.

Traditionally, the police have interviewed rape complainants and have produced a written statement that the complainant then signs. There are well-documented problems with this approach from a psychological perspective. Analysis of interviews conducted in this manner show that traditionally police officers tend to dominate the interview, constraining witness responses by asking closed and leading questions.¹⁰ Further, what is recorded in the statement is often an edited or selective version of the complainants’ account with many omissions.¹¹ Whilst the written-statement approach has the advantage of being focused, producing a statement that is quick and easy to read, increased police awareness of the above limitations have led to development of more effective interview protocols and increasing experimentation with video recording of complainant interviews in cases where serious crimes are alleged.

A more effective model of the police interview today is the “cognitive interview”. Drawing on insights from psychological research, “best practice” police interviews are increasingly conducted using the cognitive interview or related interview strategies.¹² The cognitive interview uses memory retrieval techniques such as instructions for the witness to reinstate context and report everything to increase the amount of information recalled.¹³ Recalling events in a variety of orders and from a different perspective are other cognitive interview mnemonics, but are seldom used in practice.¹⁴ The cognitive interview requires the use of enhanced social and communication skills by the interview officers.¹⁵ This means that witnesses are encouraged actively to search their memory

⁹ For a review of measures in Australia, see VLRC, n 5; for the United Kingdom, see Ministry of Justice, *Achieving Best Evidence in Criminal Proceedings: Guidance in Interviewing Victims and Witnesses, and Using Special Measures* (2011), <http://www.cps.gov.uk/publications/prosecution/> viewed 4 November 2011. For discussion of the equivalent New Zealand reforms, see Mahoney R, McDonald E, Optican S and Tinsley Y, *The Evidence Act 2006: Act and Analysis* (Brookers, 2007).

¹⁰ Fisher R, Geiselman R and Raymond D, “Critical Analysis of Police Interview Techniques” (1987) 15 *Journal of Police Science & Administration* 177; Clifford B and George R, “A Field Evaluation of Training in Three Methods of Witness/Victim Investigative Interviewing” (1996) 2 *Psychology, Crime & Law* 231.

¹¹ Lamb M, Orbach Y, Sternberg K, Hershkowitz I and Horowitz D, “Accuracy of Investigators’ Verbatim Notes of their Forensic Interviews with Alleged Child Abuse Victims” (2000) 24 *Law and Human Behavior* 699; Köhnken G, Thurer C and Zoberbier D, “The Cognitive Interview: Are Interviewers’ Memories Enhanced, Too?” (1994) 8 *Applied Cognitive Psychology* 13.

¹² Fisher R and Geiselman R, *Memory Enhancing Techniques for Investigative Interviewing: The Cognitive Interview* (Thomas, 1992); Ministry of Justice, n 9.

¹³ See Fisher and Geiselman, n 12.

¹⁴ Dando C, Wilcock R and Milne R, “The Cognitive Interview: Novice Police Officers’ Witness/Victim Interviewing Practices” (2009) 15 *Psychology, Crime & Law* 679; Kebbell M, Milne R and Wagstaff G, “The Cognitive Interview: A Survey of its Forensic Effectiveness” (1999) 5 *Psychology, Crime & Law* 101.

¹⁵ See Fisher and Geiselman, n 12; Fisher R, Geiselman R, Raymond D, Jurkevich L and Warhaftig M, “Enhancing Enhanced Eyewitness Memory: Refining the Cognitive Interview” (1987) 15 *Journal of Police Science & Administration* 291.

and recall information in their own order and at their own pace and in response to open (rather than closed) questions. A meta-analysis of the cognitive interview showed similar accuracy rates with control interviews (that is, proportion of correct to incorrect answers); the accuracy rate was 85% for the cognitive interview and 81% for the control interviews.¹⁶ Importantly for rape investigations, which often have access to limited evidence,¹⁷ on average 41% more details were elicited using the cognitive interview conditions than in the control interviews. The effectiveness of contemporary police interviewing, combined with video-recording of the interview, means that the interview can be used either as evidence-in-chief or to supplement evidence-in-chief.

Advantages of using pre-recorded interviews as evidence-in-chief

There are several reasons why using pre-recorded interviews as evidence-in-chief is preferable. First, it allows for the interview to be scrutinised at trial for evidence of best practice, less good practice, or even worst practice – a matter of interest for the defence as well as for the prosecution. A substantial body of the research literature alluded to above¹⁸ suggests that the manner in which a witness is questioned can have a substantial impact on the accuracy and volume of detail provided in her testimony. In particular, the use of leading and suggestive questions by police investigators has been shown to consistently and negatively influence responses especially in vulnerable individuals such as people with intellectual disabilities.¹⁹ Thus, having a way of determining how evidence has been elicited potentially provides the defence with material for challenging poor interview practice. A further advantage of this scrutiny is that it encourages better police investigation because interviews can be subsequently checked, and the strength of complainant's allegations can be further tested. In this respect, the introduction of recording interviews with complainants is analogous to the recording of interviews with suspects and children, which has improved the quality of both police investigative practice and the resulting evidence obtained.²⁰

Secondly, recording the police interview of a complainant has a further advantage that the complainant will be providing an account closer in time to the alleged incident, rather than attempting recall events much later at trial. (This would avoid the ritualised “refreshing of memory” by complainants using “adopted” police-prepared statements.) Research suggests that witnesses will remember more when interviewed closer in time to an event rather than later on. In a recent study of prosecutors' attitudes to the use of recorded evidence, one respondent noted:

¹⁶ Köhnken G, Milne R, Memon A and Bull R, “The Cognitive Interview: A Meta-analysis” (1999) 5(1) *Psychology, Crime & Law* 3; For a more recent meta-analysis see Memon A, Meissner C and Fraser J, “The Cognitive Interview: A Meta-analytic Review and Study Space Analysis of the Past 25 Years” (2010) 16(4) *Psychology, Public Policy and Law* 340.

¹⁷ See Edwards, n 6; Konradi, n 6.

¹⁸ For a review see Kebbell M and Wagstaff G, *Face Value? Evaluating the Accuracy of Eyewitness Information* (Home Office, 1999).

¹⁹ Clifford B and Scott J, “Individual and Situational Factors in Eyewitness Testimony” (1978) 63(3) *Journal of Applied Psychology* 352; Loftus E and Palmer J, “Reconstruction of Automobile Destruction: An Example of the Interaction Between Language and Memory” (1974) 13 *Journal of Verbal Learning and Verbal Behavior* 585.

²⁰ Gudjonsson G, *The Psychology of Interrogations and Confessions: A Handbook* (Wiley, 2003). The advent of audio-visual recorded interviews for suspects has also led to a reduction in the numbers of complainants about verballing and police misconduct: Dixon D, *Interrogating Images* (Sydney Institute of Criminology, 2007).

The video is usually made much closer to the time of the alleged offence. It is therefore more likely that the complainant will have a more detailed recollection as to what occurred.²¹

It also would mean that the evidence is “fresh” and untainted by memory degradation or distortion through the “rehearsal” of the (police-prepared) statement of the complainant. A further advantage is that a complainant’s emotions close to the time of the alleged offence are recorded. Later on, in court proceedings many months later the witness may appear less distressed and this has been shown in simulation studies to have a substantial impact on juries.

Thirdly, recording the interview allows the evidence to be elicited in an environment that is less pressured and overall more conducive to accurate recall.²² Many of the aspects of sex offences are difficult for complainants to talk about, especially the sexual nature of the allegation. Hence, recalling this information in an environment where there is usually only one interviewer is more likely to facilitate accurate reports than when this occurs in front of a whole court. As one prosecutor stated:

The reduced stress may also improve the complainant’s ability to recall and his/her willingness to divulge details that might otherwise be embarrassing. The interviewer will be specially trained in this area, and may do a better job at obtaining an account of the alleged offending than the prosecutor at trial.²³

In addition, the fact that the evidence has already been collected and is available pre-trial for disclosure to the defence may encourage early guilty pleas. This is because the defence is not required to wait to see if the complaint will proceed to testify in court or “come up to proof” when giving her evidence. Indeed, with pre-recorded evidence there is even the potential for unco-operative witnesses to be declared hostile and for the prosecution to adduce pre-recorded evidence. This may help the prosecution but also mean that complainants are less likely to be intimidated by defendants because their evidence is already available to the court. There is less of a reason for an accused to intimidate a witness if the evidence to be adduced at trial has already been recorded.

In sum, pre-recording interviews with complainants has the following advantages: the jury is likely to receive better quality information – the best available evidence – from the complainant; that evidence is more likely to be elicited in a fair manner and, at least initially, it will be obtained in a less stressful environment. That said, there are also some disadvantages with using pre-recording.

DISADVANTAGES OF USING PRE-RECORDED INTERVIEWS AS EVIDENCE-IN-CHIEF

The Stern Review’s examination of the treatment of rape victims in England and Wales revealed that the advent of video recording interviews with complainants (introduced in 2003) was “universally welcomed”, it found “substantial problems with the effectiveness of this procedure and we recommend it be reviewed”.²⁴ In particular, the Review proposed a revised approach to the interview techniques police officers used for pre-recorded interviews. Whilst Stern was somewhat vague about the exact nature of these critical issues, a study by Westera, Kebbell, and Milne²⁵ of 30 New Zealand

²¹ Westera N, Kebbell M and Milne B, “It is Better, but Does it Look Better? Prosecutor Perceptions of Using Rape Complainant Investigative Interviews as Evidence” (in review) *Psychology, Crime & Law*. See also Kebbell and Wagstaff, n 18; Read J and Connolly A, “The Effects of Delay on Long-term Memory for Witnessed Events”, in Toglia M, Read J, Ross D, and Lindsay R, *Handbook of Eyewitness Psychology: Memory for Events* (Lawrence Erlbaum Associates, 2007) pp 117-155.

²² Westera et al, n 21.

²³ Westera et al, n 21.

²⁴ Stern Review, n 1, p 15.

²⁵ See Westera et al, n 21

prosecutors' perceptions of pre-recorded evidence sheds more light on the specific challenges.

In Westera et al's study, about half of responses were that the interview *format* was not good evidence. Respondents identified problems with a lack of logical order, rambling accounts, the interviewer expressing empathy for the witness, and the inclusion of inadmissible and irrelevant detail. In the words of one interviewee:

Very discursive and hard to follow at times. Lots of irrelevant stuff. Often admissible material is intermingled with inadmissible material. Often inherent contradiction which can be used by the defence in a way that if the interview was done in the traditional manner wouldn't be the case.

To the authors' knowledge, only one study has examined the usefulness of the cognitive interview as means of eliciting credible evidence. Fisher et al²⁶ investigated if the cognitive interview might enhance perceived credibility due to the extra detail and other attributes known to affect credibility judgments such as confidence.²⁷ When an audio-recorded cognitive interview was compared to a standard interview, participants' ratings did not vary for witness credibility, confidence and memory accuracy judgments. However, the interviews in this study were only 15 minutes long, far shorter than actual interviews criticised for being overly long. Further research is required in this area.

Whilst the use of effective evidence-based interview protocols does increase the volume and accuracy of details produced, complainants may still be reluctant to provide details that are inconsistent with the allegation or portray them in a negative light. Thus, a biased account may be given. Arguably this is also the case with evidence-in-chief but at this stage of proceedings the defence argument may have been made explicit and can also be addressed in the evidence-in-chief.

A further one-third of responses to the study by Westera et al expressed the view that the video-recorded evidence had a lessened impact compared with live testimony. As one respondent put it:

For the assessment of demeanour, nothing compares to *viva voce* evidence being given during the trial. That is a major disadvantage because demeanour is often the main clue to credibility.²⁸

Or, as one legal expert cited in the Stern Review put it, "[j]uries prefer theatre to film".²⁹ In contrast, Taylor and Joudo³⁰ reviewed 18 studies that had compared different modes of presentation at trial including live testimony in court, giving evidence via closed-circuit television (CCTV), and the use of pre-recorded video. The effect of the mode of delivery (remarked upon by lawyers) was not so profound. In some studies there was a greater impact of live testimony but in the majority there appeared to be no difference, there certainly did not appear to be data to support the hesitancy expressed in the Stern Review over the use of video-recorded interviews. There are caveats to this though. Many of the studies cited by Taylor and Joudo³¹ concerned children and cross-examination via CCTV and are therefore not directly comparable to pre-recorded testimony with adults using police interviews.

²⁶ Fisher R, Mello E and McCauley M, "Are Jurors' Perceptions of Eyewitness Credibility Affected by the Cognitive Interview?" (1999) 5 *Psychology, Crime and Law* 167.

²⁷ Wells G and Leippe M, "How do Triers of Fact Infer the Accuracy of Eyewitness Identifications? Using Memory for Peripheral Detail can be Misleading" (1981) 66(6) *Journal of Applied Psychology* 682; Wells G, Lindsay R and Ferguson T, "Accuracy, Confidence, and Juror Perceptions in Eyewitness Identification" (1979) 64(4) *Journal of Applied Psychology* 440.

²⁸ See Westera et al, n 21.

²⁹ See Stern Review, n 1, p 90.

³⁰ Taylor N and Joudo J, *The Impact of Pre-recorded Video and Closed Circuit Television Testimony by Adult Sexual Assault Complainants on Jury Decision-making: An Experimental Study* (Australian Institute of Criminology: Research and Public Policy Series, 2005).

³¹ See Taylor and Joudo, n 30.

A further disadvantage identified both by the Stern Review and the study by Westera et al is that in cases where an interview was poorly conducted by the police, and this fact is clear to the jury, there will be an adverse impact on the credibility of the witness's accounts. As discussed previously, arguably, this potential impact on the prosecution's case may nevertheless serve the broader interests of justice because it places real pressure on the police to interview effectively and fairly, as well as providing the defence with an opportunity to fully scrutinise the complainant's interview, and thereby exposing potentially biased and inaccurate accounts.

BEYOND CASE CONSTRUCTION: A NEW PARADIGM OF POLICING?

The advent of the admission of pre-recorded evidence as evidence-in-chief at trial represents a profound change in dynamics within courtrooms. Traditionally, the role of eliciting the "facts" from witnesses (including complainants) has been entrusted to the lawyers at trial – an essential attribute of the adversarial system. Placing a duty on police to obtain the best available evidence for criminal proceedings would require police not only to consider their investigative needs in making the strongest case, but also what is needed by the ultimate decision-maker (judge and/or jury) to render a fair verdict according to law. This presents a serious cultural challenge for police.

Criminological research in the United Kingdom has revealed how police investigation is a continuous process of "case construction" in which the investigators, working as gatekeepers of the facts, construct knowledge about "suspects" and "what happened" through a continuous process involving the "interpretation, addition, subtraction, selection and reformulation" of facts.³² Imposing a duty on police to obtain the best available evidence (and to use processes like video-recording to achieve this), the interview now serves two purposes – the immediate purpose is to assemble a case for prosecution, but at the same time, also secure the best available evidence (irrespective of whether it serves the case for the prosecution or defence). At present, as mentioned above, there is a perception by lawyers that present police interviewing practices and processes are deficient. As such, it is important to examine ways in which they may be improved in terms of impact, content and quality.

Impact

A simple, yet critical, concern about the impact of pre-recorded interviews with witnesses is that the quality of recording varies from jurisdiction to jurisdiction, and is often poor. Many police officers have difficulty operating complex recording equipment³³ and this is a skills deficit that needs to be addressed. Further, factors such as poorly focused cameras and poor sound quality mean that jurors may find it difficult to concentrate on the evidence being given. Finally, distracting extraneous noise and interruptions have a negative impact on the quality of recordings as well as distracting the witness and impairing her recall.³⁴ Whilst this may seem a mundane suggestion, the poor quality of a recording is exaggerated and amplified by presentation to a court via projection systems or large television screens and amplified speakers.

There have been many experimental studies of jury decision-making and how the mode of giving evidence impacts on credibility. These studies usually use mock juries to determine the influence of various factors that impact on jurors' decision-making. Several of the findings from these studies are relevant to the use of pre-

³² McConville M, Saunders A and Leng R, *The Case for the Prosecution* (Routledge, 1991) pp 7-9.

³³ McGookin J, *How do Suspects Perceive the Police Interview?* (unpublished manuscript, University of Portsmouth, United Kingdom, 2011).

³⁴ See Fisher and Geiselman, n 12.

recorded testimony and how police should (as a matter of best practice) elicit evidence from witnesses. Loftus and Bell³⁵ found that when more detail was included jurors were more likely to convict. Thus, pre-recorded evidence should be more effective as a form of evidence-in-chief in terms of impact since questioning (through evidence-in-chief or cross-examination) in court encourages a less elaborated account than the questions asked during a cognitive interview.³⁶ The time delay between reporting and trial is likely to further diminish the ability of the victim to recall detail. The police should therefore use this opportunity to obtain detailed accounts concerning the most critical aspects of the case.

Further, if evidence is particularly vivid or gruesome then it is more impactful.³⁷ This would seem particularly relevant to pre-recorded evidence as the potential exists to elicit more detail concerning a sex offence with the more open questioning and more conducive atmosphere of an interview room compared with the witness box in an open court. Obtaining more detail of an alleged sex offence should be more vivid to a jury and therefore have a greater impact on a jury's decisions. The additional emotion associated with detailed recall of a traumatic event is likely to encourage belief of the veracity of an allegation.

Content

Using pre-recorded testimony means far more evidence is available to be scrutinised and this can be both positive and negative. This is concisely articulated by a judge interviewed in the Stern Review, who stated:

If there were always a proper investigation and evaluation by the police and the CPS [Crown Prosecution Service] of all the evidence uncovered in the initial stages of the investigation (not just the parts which support the prosecution case), I am confident the conviction rate would be improved in two ways. First, if the investigation reveals a serious flaw in the prosecution case the decision should be made that the prosecution should not proceed. Second, if the investigation reveals a sensible answer to or explanation for the apparently damaging evidence, the chances of obtaining a conviction will be greatly improved.³⁸

Pre-recorded evidence and effective police interviewing techniques have the potential to increase the content and volume of information available to the investigation and in turn to the court. However, this does not mean that complainants will naturally or spontaneously volunteer information during interviews that discredits them or the explicit or graphic details of the alleged offence.

Clearly, for these police recordings of complainant interviews to replace conventional evidence-in-chief, the interviews must carefully address the elements of the offence and explore potential defences upon which a defendant may later rely, especially concerning consent or (mistaken) belief in consent. In principle this is no departure from present investigative best practice; however, three challenges arise from this.

First, the interview of the victim is typically conducted early in the investigation which limits the ability seek the complainant's response to any discrepancies or inconsistencies with other evidence. Consent and other common defences should be explored but less apparent defences may not yet be known. Further, at this stage in the

³⁵ Bell B and Loftus E, "Trivial Persuasion in the Courtroom: The Power of (a Few) Minor Details" (1989) 56(5) *Journal of Personality and Psychology* 669.

³⁶ Kebbell MR, Hatton C and Johnson SD, "Witnesses with Intellectual Disabilities in Court: What Questions are Asked and What Influence Do they Have?" (2004) 9 *Legal and Criminological Psychology* 1.

³⁷ Bright D and Goodman-Delahunty J, "Gruesome Evidence and Emotion: Anger, Blame, and Jury Decision-making" (2006) 30 *Law and Human Behavior* 183.

³⁸ See Stern Review, n 1, p 88.

investigation the role of police is (or should be) to act as an impartial investigator. An exclusive focus on case construction is not only unethical, but may also compromise the quality of the investigation and prevent the case from proceeding to prosecution. Secondly, police may be reticent to test the complainant's account against inconsistent evidence or identify discrepancies in that account because that may indicate that she is not believed which has been a consistent criticism of police practice.³⁹ Thirdly, there is concern that more open forms of interviewing such as the cognitive interview place greater emphasis on the witness "taking control" of the interview and may mean that information that may cast the complainant in a negative light is not always volunteered. This leaves the complainant vulnerable to later cross-examination and the potential for important exonerating evidence for the suspect is unexplored.⁴⁰ In most cases the complainant is known to the defendant and so it is unlikely the defence will remain unaware of this material. Further, even if the defendant is unknown to the complainant, the role of the police to investigate the matter fairly means that these issues should be explored.

Clearly, following an interview practice informed by research outlined above may address many of these challenges. By explaining the interview process to the complainant, the police investigator could express the importance of providing *all* the information even if the complainant is concerned she may be viewed negatively. All avenues that are relevant to the investigation need to be explored. Indeed, with new advances in technology a complainant's claim of "no prior contact" or relationship with the defendant can be tested in various ways. There is anecdotal evidence that police are now using call data (text messages and phone calls), and the triangulation of mobile phone connections to test the veracity of allegations.⁴¹ Police and prosecutors should communicate with each other about the benefits of testing such claims by the complainant in another police interview or as supplementary evidence-in-chief.

Perhaps one of the most important aspects of the police interview is the subject of the sex offence itself. For understandable reasons, both complainant and police interviewer are often reluctant to discuss in detail the precise sexual acts. From a strictly legal perspective, only enough detail is required to prove the elements of the offence, namely the physical elements (lack of consent, act of sexual intercourse) accompanied by the requisite fault (intention, knowledge or recklessness depending on the jurisdiction), as well as rebutting any defences which the defendant raises. Indeed, simply recording the "bare bones" of the complainant's allegation that a "sexual act occurred causing upset" may not convince a jury to render a guilty verdict. As mentioned previously, the level of detail provided in the complaint has a direct impact on jury decision-making. Furthermore, if the description given of the sexual acts is consistent with consensual sex (or the jurors' *conception* of consensual sex), then jurors are less likely to convict.⁴² Thus the more detail that is elicited concerning the sex acts in rape cases that differ from consensual sex, the more a jury is likely to see that the sex acts differed from consensual sex and in turn are more likely to convict. This would

³⁹ Jordan J, *The Word of a Woman: Police, Rape and Belief* (Palgrave MacMillan, 2004).

⁴⁰ Westera N, Kebbell M and Milne R, "Interviewing Witnesses: Do Investigative and Evidential Requirements Concur?" (2011) 13(2) *British Journal of Forensic Practice* 103.

⁴¹ There is limited research on police use of new communication technologies, such as social networking sites (SNS). For a recent examination of the investigative uses of SNSs, and some of the ethical and legal issues, of this largely unregulated domain of policing in the United Kingdom, see Floinn M and Ormerod D, "Social Networking Sites, RIPA and Criminal Investigations" [2011] *Criminal Law Review* 766.

⁴² Schuller RA, McKimmie BM, Masser BM and Klippenstine MA, "Judgments of Sexual Assault: The Impact of Complainant Emotional Demeanor, Gender and Victim Stereotypes" (2010) 13 *New Criminal Law Review* 759.

seem particularly relevant to emotions.⁴³ Anecdotally, from the authors' experience, both police interviewers and complainants seem reluctant to explore detail concerning the sexual elements of the alleged offence, as well as discussing in detail indications of lack of consent where this is an issue, and also issues such as fear of the offender. This is important, as noted above, to counter common rape myths that jurors hold in relation to "proper" victims of rape. For instance, the belief that rape victims should fight back against attacker may be dispelled by the complainant explaining she did not fight because the attacker was so much bigger than her, was very aggressive and she thought he would kill or harm her if she resisted. Finally, such improvements may also have a flow on effect by increasing the likelihood of corroboration of the complainant's account with other independent evidence.

Quality of interviewing

As has been noted above, pre-recorded evidence allows for police interviewing to be scrutinised to the same degree as has been occurring for suspects and child witnesses for many years.⁴⁴ Interviewing skills have been shown to be difficult to develop and retain, so police managers need to ensure that interviewers are properly supported.⁴⁵ Concerns about the quality of police interviewing can be addressed through training, selecting the right interviewers, and monitoring what goes on in interview rooms. Simply stated, so the police do not have a negative influence, the police must interview effectively. There may be some discrepancies between what police investigators and prosecutors believe are good interviewing skills and this is something that needs to be resolved through communication between the two professional groups. This will need to include awareness from prosecutors that police departures from scientifically validated methods of best practice may be detrimental to accuracy and completeness of the brief of evidence, reducing the likelihood of an investigation progressing to prosecution.

CULTURAL CHANGE: ENHANCING POLICE AND PROSECUTION COMMUNICATION

Critically, and again central to case construction discussed above, is that from the moment an allegation is made officers are considering what the case for prosecution looks like. This focuses attention on satisfying the "legal proofs"; that is, the elements required for particular offences in terms of relevant physical elements, mental elements and availability of potential defences. Importantly, the police (as well as prosecutors) should not forget the legitimacy of defence concerns. Case construction undertaken with these concerns in mind may help ensure effective and fair investigation and prosecution.

Many rape victims are not physically harmed and forensic examination does not reveal injury beyond that which could be explained by rough or overly enthusiastic consensual sex. The important issue is whether or not consent was coerced through fear or threats. In these cases, factors that relate directly to why the complainant would have legitimate fears of the defendant are relevant and admissible. Thus, if a defendant had a history of violent behaviour, particularly against the complainant, this evidence would

⁴³ Dahl J, Enemo I, Drevland G, Wessel E, Eilertsen D and Magnussen S, "Displayed Emotion and Witness Credibility: A Comparison of Judgements by Individuals and Mock Juries" (2007) 21 *Applied Cognitive Psychology* 1145; Kaufmann G, Drevland W, Overskeid E and Magnussen S, "The Importance of Being Earnest: Displayed Emotions and Witness Credibility" (2003) 17 *Applied Cognitive Psychology* 21.

⁴⁴ See Gudjonsson, n 20.

⁴⁵ Clifford and George, n 10 at 231; Clarke C and Milne R, *National Evaluation of the PEACE Investigative Interviewing Course* (University of Portsmouth, 2001); Powell M, Fisher R and Wright R, "Investigative Interviewing" in Brewer N and Williams K, *Psychology and Law: An Empirical Perspective* (Guilford, 2005) pp 11-42.

ordinarily be inadmissible because it risks prejudicing the jury. That said, when presented in this context, clearly exploring the basis of the complainant's fear of the suspect is relevant, and appropriately explored during interviews with the complainant, other witnesses, as well as the suspect.

To make effective judgments about the suitability of adducing pre-recorded evidence, prosecutors need to spend the time reviewing the actual interview rather than a transcript or summary, which is unlikely to capture the likely impact factors explored above. Early during the investigation, time is also required to identify if and how an interview might be edited from raw footage without limiting cohesiveness or distorting the complainant's evidence. This is no departure from practice with video interviews of child witnesses, but may prove more onerous due to the additional detail likely to be generated by adult complainants. As a matter of fairness, the raw unedited recording ought to be disclosed to the defence. The extra time spent by police and prosecutors on these activities should be weighed against the potential long-term benefits noted above.

CONCLUSIONS

Pre-recorded evidence has the potential to improve the quality of information from rape complainants (whether they be children, adults or vulnerable persons). Adducing the best available evidence can be a positive influence on the ability of juries to reach just outcomes. To achieve this, police investigators need to work more closely with prosecutors in case construction, to assist not only the impact of that evidence, but also to ensure that interviews proceed in a demonstrably fair manner. Only then will the system fully exploit the opportunities provided by pre-recorded evidence. Using pre-recorded evidence of complainant interviews has the potential to improve the court process for rape complainants, enhance the quality of evidence presented in court and help increase the likelihood of achieving justice – in other words, to promote both the interests of crime control and due process in equal measure.⁴⁶

⁴⁶ A point that has been similarly made in relation to the police use of audio-visual recorded interviews of suspects: Dixon, n 20, p 263.

Appendix B: Abstracts from the papers presented in chapters 1, 2, 3 & 4

Chapter 1: Interviewing witnesses: Do investigative and evidential requirements concur?

Purpose: Legislation in many developed nations allows for the video-recorded interview of a witness made during the investigation to be used as his or her evidence-in-chief at trial. The purpose of this paper is to discuss the challenges for the criminal justice system of trying to make one interview meet both investigative and evidential purposes.

Design/methodology/approach: Advances in effective police interviewing strategies are outlined and evaluated with regards the implications of presenting evidence elicited in this manner in court.

Findings: As with any significant change, the move towards this method of evidence presents challenges. However, using this video record as evidence will ensure that the best evidence is preserved and the jury has access to a transparent record that is more accurate and complete than previously experienced.

Originality/value: The paper acknowledges that concerns over any extra time taken by using video recording must be taken into account, but also balanced against the likely long-term benefits, not only in fairness to the proceedings but also by easing the process for victims and witnesses.

Chapter 2: Interviewing rape complainants: Police officers' perceptions of interview format and quality of evidence

This study explored police perceptions of video recording rape complainant interviews for investigative and evidential purposes. Officers ($N=136$) rated the accuracy of one of three mock transcripts of a rape complainant video interview: A 'standard interview' containing inappropriately closed and leading questions; a 'structured interview' with open and appropriately closed questions and a 'cognitive interview' (CI) containing the CI mnemonics. Officers' in the standard condition rated the complainant as less accurate and that they were less likely to proceed with charges than in the structured and CI conditions. Officers cited the main advantages of video interviewing as improved forensic quality and interviewing practices, and the ability to use the interview as good evidence. Officers' rated the ideal characteristics of the complainant's video interview similarly when used for investigative compared to

evidential purposes. These findings suggest video recording complainant interviews may be one way of improving quality resolutions in rape cases.

Chapter 3: It is better, but does it look better? Prosecutor perceptions of using rape complainant investigative interviews as evidence

This study used a mixed methods design to explore prosecutor perceptions ($N=30$) of using video recorded investigative interviews of adult rape complainants as their evidence in court. Prosecutors first rated 'mock' transcript excerpts from a complainant interview where questions were either (i) inappropriately closed and leading or (ii) appropriately open. Complainants' responses were rated as less accurate and prosecutors reported that they would be less likely to recommend charges in the inappropriate compared with the appropriate questioning condition. When asked about the advantages of using the video recorded interview as evidence many prosecutors cited the improved quality of information, credibility and an improved process for rape complainants. Disadvantages cited included that the cognitive interview format used by police would negatively affect juror credibility judgments. Prosecutors rated the characteristics of an 'ideal' video recorded interview as being similar regardless of whether this was for police investigative reasons or for court prosecution. These findings suggest that using investigative interviews as evidence may be one way of improving the quality of rape complainant testimony.

Chapter 4: Losing two thirds of the story: A comparison of the recorded police interview and live evidence of rape complainants

Within-subject comparisons were made between the video-recorded investigative police interview and live direct testimony of adult rape complainants in court ($N=10$) for consistency of detail type, question type and response length, and use of interview techniques. Over two thirds of the details in the interview that were central to establishing the offending were later omitted from live evidence. This effect was consistent across all detail types including physical actions, verbalizations, emotions and was particularly pronounced for cognitions. The lack of these details in live evidence may make the complainant's testimony less convincing by invoking biases about their counter-intuitive behavior and ambiguity around the issue of consent. Both

police and prosecutors predominantly used open and yes/no specific closed questions. The significantly longer question responses and use of cognitive interview techniques by the police may account for some of the differences in testimony found. The marked reduction of relevant information a jury receives from the complainant when live evidence is used suggests pre-recorded evidence may provide a legitimate means of increasing the likelihood of justice being achieved in rape cases.

Appendix C: Transcript conditions

Excerpt 1

This excerpt commences with the opening question of the interview. The interviewer has already developed rapport, explained the interview process to the complainant and that a high level of detail is required from her.

Standard interview condition

Q. In your own time and your words just tell me everything that you can remember in as much detail as possible...

A. Okay, well um we had a party last night, like at my flat, that is where it happened. I was talking with Jane.

Q. Who's Jane?

A. Oh, Jane is my flatmate we've known each other since school you know... And um this guy came up to me.

Q. Can you tell me his name?

A. I think his name was Sam... he seemed ok, we were talking and stuff.

Q. What did he do?

A. He started being creepy and getting real heavy like and saying things like um I want to fuck you and stuff like that.

Q. What did you do?

A. Yeah, Jane and I just laughed at first cos he was so unreal and I was like no way. Well, we were drinking and everyone was just having fun and I thought he was just being silly. I got tired so went to bed and then he came in, I just freaked out...

Q. Who was it?

A. It was Sam. He got on top of me and um... he raped me.

Structured interview condition

Q. In your own time and your words just tell me everything that you can remember in as much detail as possible...

A. Okay, well um we had a party last night, like at my flat, that is where it happened. I was talking with Jane. Oh, Jane is my flatmate we've known each other since school you know... And um this guy came up to me. I think his name was Sam... he seemed ok, we were talking and stuff. He started being creepy and getting real heavy like and saying things like um I want to fuck you and stuff like that. Yeah, Jane and I just laughed at first cos he was so unreal and I was like no way. Well, we were drinking and everyone was just having fun and I thought he was just being silly. I got tired so went

to bed and then he came in, I just freaked out... It was Sam. He got on top of me and um... he raped me.

CI condition

Q. I need a high level of detail from you, so I want you to concentrate really hard. I wasn't there so I do not know what happened. You are the one with all the information, so I need you to tell me everything that you can remember. I want you to tell me everything you can about what happened last night, even the things you think are not important, and even if you cannot remember something completely or can only remember it partially. Everything which comes to mind I want you tell me in your own time and pace. I want you to think back to a point in time on that night. It is like when you have lost something and you try to picture in your mind where you last had it, it is like that. What I want you to do is build a picture in your mind. Think of where you were. How were you feeling. What could you hear. What could you smell. Think of all the people who were present. Think about all the objects there. Think of the layout of where you were. Get a really good picture in your mind. Tell me everything you can, even the little things you think are not important. Remember I was not there, so just tell me everything in your own time...

A. Okay, well um we had a party last night, like at my flat, that is where it happened. I was talking with Jane. Oh, Jane is my flatmate we've known each other since school you know... And um this guy came up to me. I think his name was Sam... he seemed ok, we were talking and stuff. He started being creepy and getting real heavy like and saying things like um I want to fuck you and stuff like that. Yeah, Jane and I just laughed at first cos he was so unreal and I was like no way. Well, we were drinking and everyone was just having fun and I thought he was just being silly. I got tired so went to bed and then he came in, I just freaked out... It was Sam. He got on top of me and um... he raped me.

Excerpt 2

This excerpt concerns the description of 'Sam'. The complainant has not previously provided a description of Sam.

Standard interview condition

Q. Tell me what Sam looks like?

A. Um...he's kind of fat and chubby and um he's got black hair I think. And he's got brown eyes I think and...

Q. Dark skin?

A. Yeah and dark skin.

Q. Has he got any facial hair?

A. Um...yeah he has a goatee.

Q. What was he wearing?

A. Um... wearing jeans and these sandals I think and a red T Shirt, and I think it was like white sleeved colour...

Q. Red and white sleeves?

A. Yeah. Red and white sleeves.

Q. How short were the sleeves?

A. Um... I think they were short sleeves.

Structured interview condition

Q. Describe Sam to me in as much detail as you can...

A. Um...he's kind of fat and chubby and um he's got black hair I think. And he's got brown eyes I think and yeah and dark skin.

Q. Is there anything else you can remember about him?

A. Um... yeah he has a goatee.

Q. Describe his clothing in as much detail as you can...

A. Um... wearing jeans and these sandals I think and a red T Shirt, and I think it was like white sleeved colour... Yeah. Red and white sleeves.

Q. Describe the sleeves...

A. Um... I think they were short sleeves.

CI condition

'Q. I am going to ask you some questions now based on what you have already told me. It is fine to say 'I don't know' to any questions you do not know the answer to. Tell me everything you can remember in response to each question. You mentioned Sam. I want you to try and get a good clear picture of him in your mind's eye. Think about when you got the best view of him. Think of what he looked like, his overall appearance. What was he wearing. What you could smell. What you could hear. When you have a good clear picture of him, describe Sam to me in as much detail as you can...

A. Um...he's kind of fat and chubby and um he's got black hair I think. And he's got brown eyes I think and yeah and dark skin.

Q. Is there anything else you can remember about him?

A. Um... yeah he has a goatee.

Q. Focus on his clothing. Describe his clothing in as much detail as you can... A. Um... wearing jeans and these sandals I think and a red T Shirt, and I think it was like white sleeved colour... Yeah. Red and white sleeves.

Q. Describe the sleeves...

A. Um... I think they were short sleeves.'

Excerpt 3

This excerpt concerns the description of the alleged offending. The only detail previously given by the complainant directly relating to the offending is that she was 'raped'.

Standard interview condition

Q. You said he raped you. Did he do anything else to you?

A. Yeah.

Q. What did he do?

A. He um lay on top of me and was like was kissing me around my face and neck and touching my breasts. His mouth was all wet it was disgusting...

Q. And just explain to me exactly how he raped you, how did he pull your pants down, um did he, you know rip them off or did he pull them down or did he make you roll over to get them off or how did it happen...

A. Um he pulled down my undies and raped me.

Q. Was he saying anything?

A. He just um kept saying 'just relax', 'just relax' I remember he was real calm like.

Q. What did he then do to you?

A. And then um... he raped me.

Q. Did you do anything to try and stop him?

A. He was so much bigger than me I just couldn't fight him off.

Q. Did you say anything to try and stop him?

A. I said don't, don't and I tried to push him off. I should've stopped him but I just couldn't...

Q. I know it's difficult but just for the purpose of clarifying, um when you say that he raped you, um just clarify you mean he put his penis into your vagina?

A. Yeah. He put his penis into my vagina.

Structured interview condition

Q. You said he raped you. Describe to me everything that happened in as much detail as you can...

A. He um lay on top of me and was like was kissing me around my face and neck and touching my breasts. His mouth was all wet it was disgusting... Um he pulled down my undies and raped me. He just um kept saying 'just relax', 'just relax' I remember he was real calm like and then um... he raped me.

Q. While this was happening, tell me everything that you did...

A. He was so much bigger than me I just couldn't fight him off. I said don't, don't and I tried to push him off. I should've stopped him but I just couldn't...

Q. I know it's difficult, but I need you to um to tell me what you mean when you um say 'rape'...

A. Yeah. He put his penis into my vagina.

CI condition

Q. I want you to think back to what happened in the bedroom. You said he raped you. Describe to me everything that happened in as much detail as you can...

A. He um lay on top of me and was like was kissing me around my face and neck and touching my breasts. His mouth was all wet it was disgusting... Um he pulled down my undies and raped me.

He just um kept saying 'just relax', 'just relax' I remember he was real calm like and then um... he raped me.

Q. While this was happening, tell me everything that you did...

A. He was so much bigger than me I just couldn't fight him off. I said don't, don't and I tried to push him off. I should've stopped him but I just couldn't...

Q. I know it's difficult, but I need you to um to tell me what you mean when you um say 'rape'...

A. Yeah. He put his penis into my vagina.

Appendix D: Example police questionnaire

NOTE: Not all information gathered from the questionnaire is reported in this doctoral thesis.

Information sheet:

Improving investigations and prosecutions of adult sexual assault cases

Dear sir/madam,

Please find attached to this email a questionnaire that seeks to examine how to improve investigative and prosecutory practices into adult sexual assault cases. You have been identified to complete this questionnaire because police records suggest you are involved in these types of investigations.

Who is conducting the research?

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Why is the research being conducted?

This research is being conducted to improve investigative and prosecutory practices into adult sexual assault cases. This questionnaire is a component of Senior Sergeant Nina Westera's partial completion of a Doctor of Philosophy (PhD) at Griffith University, Queensland.

Approval for this research has been given by the NZ Police Research and Evaluation Steering Committee, New Zealand Police District Commanders and the National Manager of Criminal Investigations.

What you will be asked to do

The questionnaire should take about 45 minutes to complete. Part A requires you to rate excerpts from a transcript of an interview with a complainant of adult sexual

assault. In Part B you will also be asked how you think investigative and prosecutorial practices can be improved. In Part C you are asked to rate in your opinion, the characteristics of the best type of information elicited from adult sexual assault complainants for the purpose of investigations and then for the purpose of presenting evidence at trial. Part D asks for your demographic information which will enable the researcher to conduct a comparative analysis of the results.

The expected benefits of the research

These results will be reported back to police, prosecutorial agencies and the judiciary to help improve practices in the investigation and prosecution of adult sexual assault cases. The results will also be published in academic journals to help inform practices internationally.

Risks to you

There are no anticipated risks to you.

Your participation is confidential and voluntary

Participation in the questionnaire is anonymous. The researchers will not know the identity of those who respond or do not respond to the research. Individuals cannot be identified from the questionnaire and will not be identifiable to any parties in the publication of the results of this research. Your participation in this questionnaire is completely voluntary. Completion of the questionnaire implies consent for the researcher to use the data. **The research does not involve access to, collection or generation of identified personal information.**

Further information

Please contact any member of the research team if you require further information.

Ethical conduct of this research

Ethical approval to conduct this research has been granted by the Griffith University Ethics Committee. Griffith University conducts research in accordance with the *National Statement on Ethical Conduct in Human Research*. If you have any concerns or complaints about the ethical conduct of this research please contact: the Manager, Research Ethics, Office for Research, Bray Centre, Nathan Campus, Griffith University (ph: 0064 73735 5585 or research-ethics@griffith.edu.ac).

Feedback to you

The PhD thesis produced as a result of this research will be available in the NZ Police Library. The findings will also be presented at seminars available to police members.

Please keep this information sheet for your own reference.

Thank you for your assistance.

Questionnaire 1**1. Part A**

After a member of your squad has been placed on an extended period of sick leave, you are assigned one of their investigation files for a complaint of sexual violation by rape. The 21 year old complainant was allegedly raped on the night of a party at her home address. The alleged offender is a male she met for the first time at the party. The complainant contacted police the day after the party and underwent a full medical examination that neither confirms nor excludes the possibility the sexual offending occurred. The only information about the complainant in police records is that she has a drivers license. The alleged offender was identified and spoken to, he admitted to being at the party and claimed to have had consensual sex with the complainant on that night, but refused to be interviewed on a more substantial basis. He has no previous convictions. There is no other evidence relating to this offence.

On receiving the file you decide to review the transcript of the complainant's visually recorded interview to decide whether to charge the suspect. Several excerpts of the complainant's transcript are provided overleaf. Please read each excerpt and complete the rating scale before moving onto the next excerpt.

Questionnaire 1

2. Excerpt 1: What do you think?

This excerpt commences with the opening question of the interview. The interviewer has already developed rapport, explained the interview process to the complainant and that a high level of detail is required from her.

'Q. In your own time and your words just tell me everything that you can remember in as much detail as possible...

A. Okay, well um we had a party last night, like at my flat, that is where it happened. I was talking with Jane.

Q. Who's Jane?

A. Oh, Jane is my flatmate we've known each other since school you know... And um this guy came up to me.

Q. Can you tell me his name?

A. I think his name was Sam... he seemed ok, we were talking and stuff.

Q. What did he do?

A. He started being creepy and getting real heavy like and saying things like um I want to fuck you and stuff like that.

Q. What did you do?

A. Yeah, Jane and I just laughed at first cos he was so unreal and I was like no way. Well, we were drinking and everyone was just having fun and I thought he was just being silly. I got tired so went to bed and then he came in, I just freaked out...

Q. Who was it?

A. It was Sam. He got on top of me and um... he raped me.'

Based solely on all the information you have been given so far how would you rate the accuracy of this information (accuracy is defined as the degree to which someone is correct)?

	Not accurate	1	2	3	4	5	6	7	8	9	Very accurate
Accuracy		<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	

Why?

Based solely on all the information you have been given so far how would you rate the credibility of this complainant (credibility is defined as the degree to which someone is believable and trustworthy)?

	Not credible	1	2	3	4	5	6	7	8	9	Very credible
Credibility		<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	

Why?

Questionnaire 1

3. Excerpt 2: What do you think?

This excerpt concerns the description of 'Sam'. The complainant has not previously provided a description of Sam.

'Q. Tell me what Sam looks like?

A. Um...he's kind of fat and chubby and um he's got black hair I think. And he's got brown eyes I think and...

Q. Dark skin?

A. Yeah and dark skin.

Q. Has he got any facial hair?

A. Um...yeah he has a goatee.

Q. What was he wearing?

A. Um... wearing jeans and these sandals I think and a red T Shirt, and I think it was like white sleeved colour...

Q. Red and white sleeves?

A. Yeah. Red and white sleeves.

Q. How short were the sleeves?

A. Um... I think they were short sleeves.'

Based solely on all the information you have been given so far how would you rate the accuracy of this information?

	Not accurate	2	3	4	5	6	7	8	Very accurate
	1								9
Accuracy	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Why?

Based solely on all the information you have been given so far how would you rate the credibility of this complainant?

	Not credible	2	3	4	5	6	7	8	Very credible
	1								9
Credibility	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Why?

Questionnaire 1

4. Excerpt 3: What do you think?

This excerpt concerns the description of the alleged offending. The only detail previously given by the complainant directly relating to the offending is that she was 'raped'.

Q. You said he raped you. Did he do anything else to you?

A. Yeah.

Q. What did he do?

A. He um lay on top of me and was like was kissing me around my face and neck and touching my breasts. His mouth was all wet it was disgusting...

Q. And just explain to me exactly how he raped you, how did he pull your pants down, um did he, you know rip them off or did he pull them down or did he make you roll over to get them off or how did it happen...

A. Um he pulled down my undies and raped me.

Q. Was he saying anything?

A. He just um kept saying 'just relax', 'just relax' I remember he was real calm like.

Q. What did he then do to you?

A. And then um... he raped me.

Q. Did you do anything to try and stop him?

A. He was so much bigger than me I just couldn't fight him off.

Q. Did you say anything to try and stop him?

A. I said don't, don't and I tried to push him off. I should've stopped him but I just couldn't...

Q. I know it's difficult but just for the purpose of clarifying, um when you say that he raped you, um just clarify you mean he put his penis into your vagina?

A. Yeah. He put his penis into my vagina.'

Based solely on all the information you have been given so far how would you rate the accuracy of this information?

	Not									Very
	accurate	2	3	4	5	6	7	8	accurate	
	1									9
Accuracy	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Why?

Questionnaire 1

Based solely on all the information you have been given so far how would you rate the credibility of this complainant?

	Not credible	2	3	4	5	6	7	8	Very credible
	1								9
Credibility	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Why?

Based solely on all the information you have been given so far how do you rate the likelihood you would charge the alleged offender?

	Very unlikely	2	3	4	5	6	7	8	Very likely
	1								9
Likelihood of charging	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Why?

Based solely on all the information you have been given so far how do you rate the likelihood the alleged offender has committed this offence?

	Very unlikely	2	3	4	5	6	7	8	Very likely
	1								9
Likelihood offence committed	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Why?

Questionnaire 1

5. What would a jury think?

If the visually recorded interview of the complainant was played to a jury at trial as their evidence in chief...

Based solely on all the information you have been given so far how do you think a jury would rate the accuracy of this information?

	Not accurate	2	3	4	5	6	7	8	Very accurate
	1								9
Accuracy	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Why?

Based solely on all the information you have been given so far how do you think a jury would rate the credibility of this complainant?

	Not credible	2	3	4	5	6	7	8	Very credible
	1								9
Credibility	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Why?

Based solely on all the information you have been given so far how do you rate the likelihood of a jury convicting the alleged offender at trial?

	Very unlikely	2	3	4	5	6	7	8	Very likely
	1								9
Likelihood of conviction	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Why?

How do you rate the realism of the scenario used in this questionnaire?

	Not realistic	2	3	4	5	6	7	8	Very realistic
	1								9
Realism	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Why?

Questionnaire 1

6. Part B: Visually recording complainant interviews

Part B seeks your opinion on the advantages and disadvantages of visually recording adult sexual assault complainant interviews:

- generally for investigations
- for investigations when using the enhanced cognitive interview
- generally for prosecutions
- for prosecutions when using the enhanced cognitive interview

Questionnaire 1**7. Visually recording complainant interviews for investigations**

When an adult sexual assault complainant's interview is visually recorded rather than recorded by written statement:

What are the advantages to investigations?

What are the disadvantages to investigations?

How could these disadvantages be overcome?

Questionnaire 1

8. Visually recording complainant interviews for investigations using the enha...

When an adult sexual assault complainant's interview is visually recorded:

What are the advantages to investigations of using the enhanced cognitive interview technique?

(The enhanced cognitive interview uses memory enhancing techniques that tend to produce a more detailed account of events which is structured according to the complainant's memory)

What are the disadvantages to investigations of using the enhanced cognitive interview technique?

How could these disadvantages be overcome?

Questionnaire 1**9. Visually recording complainant interviews for prosecutions**

At a jury trial when an adult sexual assault complainant's visually recorded interview is used as their evidence in chief rather than them giving evidence in person:

What are the advantages to prosecutions?

What are the disadvantages to prosecutions?

How could these disadvantages be overcome?

Questionnaire 1**10. Visually recording complainant interviews for prosecutions using the enhanc...**

At a jury trial when an adult sexual assault complainant's visually recorded interview is used as their evidence in chief:

What are the advantages to prosecutions when the interview is conducted using the enhanced cognitive interview technique?

What are the disadvantages to prosecutions when the interview is conducted using the enhanced cognitive interview technique?

How could these disadvantages be overcome?

Questionnaire 1**11. Part C**

Part C comprises of two sections regarding the ideal characteristics of a visually recorded interview with an adult sexual assault complainant.

The same rating scale is used to examine what is:

- the best information for an investigation
- the best evidence for a jury trial.

Questionnaire 1

12. Section 1: Investigations

The best information for investigations is defined as information likely to result in the charging of the guilty and identification of the innocent.

Please indicate your opinion by ticking the appropriate circles on this 56 item scale that is separated into four segments for ease of reading.

For the best information for investigations the account given during a visually recorded interview with an adult sexual assault complainant should...

	Strongly disagree 1	2	3	Neutral 4	5	6	Strongly agree 7
contain a high level of detail about information peripheral to the alleged offence (i.e. information not directly relevant to the charges)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
contain no inconsistencies within the account	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
tell a story	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
cover evidentially important topics first	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
contain information that is peripheral to the alleged offence but helps the complainant remember	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be ordered according to the complainant's recall	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
address inconsistencies within and between the complainant's accounts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
address any issues that may later be used to discredit the complainant	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be primarily elicited using closed questions (questions that elicit a few words to answer) e.g. 'what colour was his shirt?'	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be elicited after they have been asked to concentrate hard	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be as accurate as possible	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be concise	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be primarily elicited using open questions (questions that elicit a wide answer – more than a few words) e.g. 'describe him to me...'	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Questionnaire 1

For the best information for investigations the account given during a visually recorded interview with an adult sexual assault complainant should... (continued)

	Strongly disagree 1	2	3	Neutral 4	5	6	Strongly agree 7
cover all avenues of the investigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be elicited in a manner dependant on the characteristics of the complainant	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be given near to the time of the alleged offence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
include the drawing of a sketch plan of the scene by the complainant	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be primarily elicited using leading questions (questions that imply the answer) e.g. 'was he wearing a brown shirt?'	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
contain no ambiguities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
include the complainant being asked not to guess or fill in any gaps in memory	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
include the complainant being asked to report everything they know	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
include partial memories	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
only contain information directly relevant to the alleged offence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
include information that may seem trivial or unimportant to the complainant	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be in chronological order	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be elicited using a traditional police interview (using direct short answer questions)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
contain a high level of detail about information central to the alleged offence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be emotional	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Questionnaire 1

For the best information for investigations the account given during a visually recorded interview with an adult sexual assault complainant should... (continued)

	Strongly disagree 1	2	3	Neutral 4	5	6	Strongly agree 7
be elicited in a variety of orders e.g. forwards and backwards	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
not be interrupted	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be elicited after giving them mental cues about the physical and emotional context	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
have the complainant doing most of the talking	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be elicited through simply worded questions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
contain peripheral information that can be corroborated by other witnesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
include an explanation of the interview process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be coherent	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
include memories they are not confident in	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be as complete as possible	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be elicited using a structured interview (using open and then closed questions)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
contain verbal hesitations, verbal hedges and false starts in speech e.g. 'Um...', 'I think...', 'I...he...'	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
cover evidentially important topics more than once	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
contain primarily short and direct responses to the questions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Questionnaire 1

For the best information for investigations the account given during a visually recorded interview with an adult sexual assault complainant should... (continued)

	Strongly disagree 1	2	3	Neutral 4	5	6	Strongly agree 7
be elicited when the complainant is concentrating hard	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
appear to be accurate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be clearly communicated	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
include the interviewer using pauses and silence to give the complainant time to think	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
contain primarily free narrative responses to the questions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be elicited using the enhanced cognitive interview	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be probed for more detail about evidentially important topics e.g. 'tell me more about that...'	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
include the interviewer building rapport with the complainant	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be given from a variety of perspectives e.g. from the complainant's own viewpoint and the viewpoint of the offender	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be in a logical order	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be given in the complainant's own time	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
emphasise evidentially important points	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be easily understood	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be provided in a confident manner	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please list any other characteristics of the complainant interview you think are important to obtaining the best information for investigations:

Questionnaire 1

13. Section 2: Evidence

The best evidence for a jury trial is defined as evidence likely to result in the conviction of the guilty and acquittal of the innocent.

Please indicate your opinion by ticking the appropriate circles on this 56 item scale that is separated into four segments for ease of reading.

For the best evidence at a jury trial where a visually recorded interview of an adult sexual assault complainant is being used as their evidence in chief, the account given during the visually recorded interview should...

	Strongly disagree 1	2	3	Neutral 4	5	6	Strongly agree 7
contain a high level of detail about information peripheral to the alleged offence (i.e. information not directly relevant to the charges)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
contain no inconsistencies within the account	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
tell a story	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
cover evidentially important topics first	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
contain information that is peripheral to the alleged offence but helps the complainant remember	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be ordered according to the complainant's recall	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
address inconsistencies within and between the complainant's accounts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
address any issues that may later be used to discredit the complainant	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be primarily elicited using closed questions (questions that elicit a few words to answer) e.g. 'what colour was his shirt?'	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be elicited after they have been asked to concentrate hard	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be as accurate as possible	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be concise	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be primarily elicited using open questions (questions that elicit a wide answer - more than a few words) e.g. 'describe him to me...'	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Questionnaire 1

For the best evidence at a jury trial where a visually recorded interview of an adult sexual assault complainant is being used as their evidence in chief, the account given during the visually recorded interview should...
(continued)

	Strongly disagree 1	2	3	Neutral 4	5	6	Strongly agree 7
cover all avenues of the investigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be elicited in a manner dependant on the characteristics of the complainant	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be given near to the time of the alleged offence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
include the drawing of a sketch plan of the scene by the complainant	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be primarily elicited using leading questions (questions that imply the answer) e.g. 'was he wearing a brown shirt?'	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
contain no ambiguities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
include the complainant being asked not to guess or fill in any gaps in memory	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
include the complainant being asked to report everything they know	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
include partial memories	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
only contain information directly relevant to the alleged offence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
include information that may seem trivial or unimportant to the complainant	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be in chronological order	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be elicited using a traditional police interview (using direct short answer questions)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
contain a high level of detail about information central to the alleged offence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be emotional	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Questionnaire 1

**For the best evidence at a jury trial where a visually recorded interview of an adult sexual assault complainant is being used as their evidence in chief, the account given during the visually recorded interview should...
(continued)**

	Strongly disagree 1	2	3	Neutral 4	5	6	Strongly agree 7
be elicited in a variety of orders e.g. forwards and backwards	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
not be interrupted	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be elicited after giving them mental cues about the physical and emotional context	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
have the complainant doing most of the talking	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be elicited through simply worded questions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
contain peripheral information that can be corroborated by other witnesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
include an explanation of the interview process	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be coherent	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
include memories they are not confident in	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be as complete as possible	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be elicited using a structured interview (using open and then closed questions)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
contain verbal hesitations, verbal hedges and false starts in speech e.g. 'Um...', 'I think...', 'I...he...'	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
cover evidentially important topics more than once	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
contain primarily short and direct responses to the questions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Questionnaire 1

For the best evidence at a jury trial where a visually recorded interview of an adult sexual assault complainant is being used as their evidence in chief, the account given during the visually recorded interview should...
(continued)

	Strongly disagree 1	2	3	Neutral 4	5	6	Strongly agree 7
be elicited when the complainant is concentrating hard	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
appear to be accurate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be clearly communicated	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
include the interviewer using pauses and silence to give the complainant time to think	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
contain primarily free narrative responses to the questions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be elicited using the enhanced cognitive interview	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be probed for more detail about evidentially important topics e.g. 'tell me more about that...'	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
include the interviewer building rapport with the complainant	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be given from a variety of perspectives e.g. from the complainant's own viewpoint and the viewpoint of the offender	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be in a logical order	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be given in the complainant's own time	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
emphasise evidentially important points	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be easily understood	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
be provided in a confident manner	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please list any other characteristics of the complainant interview you think are important to obtaining the best evidence for a jury trial:

Questionnaire 1**14. Part D: Demographics**

Finally, to assist with the statistical analysis please indicate the answer that applies to you:

What is your rank and designation?

- ☐ Constable
- ☐ Constable on Trial
- ☐ Detective Constable
- ☐ Detective
- ☐ Detective Sergeant
- ☐ Detective Senior Sergeant
- ☐ Other

Please specify

What type of squad are you a member of?

- ☐ General CIB
- ☐ Dedicated adult sexual assault
- ☐ Dedicated adult and child sexual assault
- ☐ Other

Please specify

Do you conduct investigations in relation to adult sexual assault?

- ☐ Yes ☐ No

Do you conduct interviews with adult sexual assault complainants?

- ☐ Yes ☐ No

Questionnaire 1

Please indicate your prior training (you may tick more than one box):

- ☐ Adult Sexual Assault Investigators course
- ☐ Forensic Evidential Interviewing
- ☐ Investigative Interviewing Level 1 (accredited)
- ☐ Investigative Interviewing Level 1 (trained only)
- ☐ Investigative Interviewing Level 3: Specialist Adult Witness (accredited)
- ☐ Investigative Interviewing Level 3: Specialist Adult Witness (trained only)
- ☐ UK Interview training

Other interview training (please specify):

Gender:

- ☐ Female ☐ Male

Please indicate your:

Age

Years in service as a
police officer

Appendix E: Example prosecutor questionnaire

NOTE: Not all information gathered from the questionnaire is reported in this doctoral thesis.

Information sheet:

Improving the investigations and prosecutions of adult sexual assault cases

Dear sir/madam,

Please find attached to this email a questionnaire that seeks to examine how to improve investigative and prosecutorial practices in adult sexual assault cases. You have been identified to complete this questionnaire because of your involvement in these types of prosecutions.

Who is conducting the research?

Nina Westera (PhD student)
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Why is the research being conducted?

This questionnaire is a component of Senior Sergeant Nina Westera's partial completion of a Doctor of Philosophy (PhD) at Griffith University, Queensland.

Approval for this research has been granted by your law firm.

What you will be asked to do

The questionnaire should take about 30 minutes to complete. Part A involves rating excerpts from a transcript of an interview with a complainant of adult sexual assault. Part B asks a series of questions on the advantages and disadvantages to using the visually recorded interview of the complainant as evidence. Part C involves rating your opinion on what are the ideal characteristics of an adult sexual assault complainant's

interview. Part D asks for your demographic information which will enable the researcher to conduct a comparative analysis of the results.

The expected benefits of the research

These results will be reported back to police, prosecutorial agencies and the judiciary to assist with improving practices in adult sexual assault cases. The results will also be published in an academic journal to help inform practices internationally.

Risks to you

There are no anticipated risks to you.

Your participation is confidential and voluntary

Participation in the questionnaire is anonymous. Individuals cannot be identified from the questionnaire and will not be identifiable to the researchers or any parties in the publication of the results of this research. Your participation in this questionnaire is completely voluntary. Completion of the questionnaire implies consent for the researcher to use the data. **The research does not involve access to, collection or generation of identified personal information.**

Further information

Please contact any member of the research team if you require further information.

Ethical conduct of this research

Ethical approval to conduct this research has been granted by the Griffith University Ethics Committee. Griffith University conducts research in accordance with the *National Statement on Ethical Conduct in Human Research*. If you have any concerns or complaints about the ethical conduct of this research please contact: the Manager, Research Ethics, Office for Research, Bray Centre, Nathan Campus, Griffith University (ph: 0064 73735 5585 or research-ethics@griffith.edu.ac).

Feedback to you

A copy of the PhD thesis produced as a result of this research will be provided to your law firm.

Please keep this information sheet for your own reference.

Thank you for your assistance.

Prosecutors ST**1. Part A**

Police are seeking a legal opinion from you about an investigation file for a complaint of sexual violation by rape. The 21 year old complainant was allegedly raped on the night of a party at her home address. The alleged offender is a male she met for the first time at the party. The complainant contacted police the day after the party and underwent a full medical examination that neither confirms nor excludes the possibility the sexual offending occurred. The only information about the complainant in police records is that she has a drivers license. The alleged offender was identified and spoken to, he admitted to being at the party and claimed to have had consensual sex with the complainant on that night, but refused to be interviewed on a more substantial basis. He has no previous convictions. There is no other evidence relating to this offence.

On receiving the file you decide to review the transcript of the complainant's visually recorded interview to determine whether to recommend charges be laid against the suspect. Several excerpts of the complainant's transcript are provided overleaf. Please read each excerpt and complete the rating scale before moving onto the next excerpt.

Pages 2-4 of questionnaire are identical to Police Questionnaire pages 2-4 (refer to Appendix D)

Prosecutors ST

Based solely on all the information you have been given so far how do you rate the likelihood you would recommend police charge the alleged offender?

Very unlikely 2 3 4 5 6 7 8 Very likely
1 9

Likelihood of charging ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

Why?

Based solely on all the information you have been given so far how do you rate the likelihood the alleged offender has committed this offence?

Very unlikely 2 3 4 5 6 7 8 Very likely
1 9

Likelihood offence committed ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐

Why?

Pages 6-7 of questionnaire are identical to Police Questionnaire page 6 (refer to Appendix D)

Prosecutors ST

6. Part B: Visually recording complainant interviews

Part B seeks your opinion on the advantages and disadvantages to prosecutions of using the visual recorded interview of an adult sexual assault complainant as evidence:

- generally
- when using the enhanced cognitive interview.

Prosecutors ST**7. Visually recording complainant interviews for prosecutions**

At a jury trial when an adult sexual assault complainant's visually recorded interview is used as their evidence in chief rather than them giving evidence in person:

What are the advantages to prosecutions?

What are the disadvantages to prosecutions?

How could these disadvantages be overcome?

Prosecutors ST

8. Visually recording complainant interviews for prosecutions using the enhanc...

At a jury trial when an adult sexual assault complainant's visually recorded interview is used as their evidence in chief:

What are the advantages to prosecutions when the interview is conducted using the enhanced cognitive interview technique? (The enhanced cognitive interview uses memory enhancing techniques that tend to produce a more detailed account of events which is structured according to the complainant's memory)

What are the disadvantages to prosecutions when the interview is conducted using the enhanced cognitive interview technique?

How could these disadvantages be overcome?

Pages 11-19 of questionnaire are identical to Police Questionnaire pages 12-20 (refer to Appendix D)

Prosecutors ST**12. Part D: Demographics**

Finally, to assist with the statistical analysis please indicate the answer that applies to you:

**Do you
conduct
prosecutions
for adult
sexual
assault
cases?**

☐ Yes ☐ No

How many cases have you prosecuted where the video interview of an adult sexual assault complainant (who is not suffering from an intellectual impairment) has been played as their evidence in chief?

Number (enter 0 if none):

What training have you received in how to elicit testimony from witnesses?

**Have you
attended a
presentation
by NZ Police
on video
recording
witness
interviews?**

☐ Yes ☐ No

Gender:

☐ Female ☐ Male

Please indicate your:

Age

Years worked as a prosecutor

Appendix F: Case summaries

Below are summaries for all ten cases that met the selection criteria for the transcript analysis detailed in Chapter 4, followed by the four cases that were excluded from the sample. After the summaries are some general observations about the differences between the interview and live evidence

Case 1: De facto partner rape

Charges: Rape x 2

Result: Not guilty on all counts

Defence: Consent. The complainant was jealous the defendant was seeing someone else.

Summary of complainant's account: The complainant and the defendant were in a de-facto sexual relationship for some months when the complainant told the defendant she did not want to have sex with him because she was going through a difficult time emotionally. Soon after this discussion the complainant was lying in bed when she woke up to the defendant sexually violating her. Despite the complainant's request for him to stop the defendant proceeded to rape her.

Case 2: De facto partner repeat sexual and physical violence

Charges: Rape x 4, kidnapping, assault x 2, threatens to kill x 2

Result: Guilty on all counts except for two rapes

Defence: Consent. The complainant was vulnerable psychologically.

Summary of complainant's account: The defendant and the complainant were in a relationship for a number of years. He became enraged when he saw the complainant talking to a male colleague. During the course of that day and night he committed a series of assaults on her, threatened to kill her and despite her protests, raped her in numerous different ways.

Case 3: Acquaintance unlawful sexual connection

Charges: Rape x 1, indecent assault x1

Result: Guilty on all counts

Defence: Consent. The complainant made up the allegation because she felt guilty about having a liaison with the defendant who is a family member's partner.

Summary of complainant's account: After a party at a relative's house the complainant went to the couch to sleep when the defendant sat down beside her and started massaging her body. Although this was unwanted by the complainant she was so tired she fell asleep. She awoke during the night to find the defendant had removed her clothes and was indecently assaulting her. The complainant told the defendant to stop and he apologized and did so. The complainant fell asleep and awoke again to find the defendant sexually violating her. She physically forced him away. Again he apologized and soon after she felt the couch moving as though he was masturbating himself, she lay still and pretended to be asleep.

Case 4: De facto partner repeat sexual and physical violence

Charges: Rape x 3; assaults x 4

Result: Not guilty rape x 2 and assault x 1; hung rape x 1 and assault x1; guilty assault x 1; discharged without conviction assault x 1

Defence: Consent. The complainant liked rough sex and therefore it was consensual.

Summary of complainant's account: The complainant and the defendant were in a relationship for some months. During the course of relationship the defendant was physically violent with the complainant and would force her to have sex with him in a variety of different ways.

Case 5: Acquaintance unlawful sexual connection

Charges: Rape x 2 (2 defendant together with)

Result: Guilty rape x 1 (principle defendant); not guilty x 1 (defendant party to the offending)

Methods of interview: video interview, live evidence

Defence: It didn't happen. The complainant was mistaken about what happened because she was tired and drunk.

Summary of complainant's account: After a night drinking with some acquaintances the complainant went to at her home address with her boyfriend. After falling asleep she was awoken by the feeling of a hard object inside her vagina. She recognized defendant 1 by his voice as an acquaintance she had spent the night drinking with. He was kneeling beside the bed. She also recognized the other defendant 2, also an acquaintance she was drinking with, who was standing by the door to her room watching on. The defendants ran from the house. When the complainant got out of bed she noticed two

objects on the floor of her bedroom. She believed it was one of the items that had been inserted into her vagina.

Case 6: De facto partner repeat sexual violence

Charges: Rape x 10

Result: Not guilty on all counts

Defence: Consent. The complainant is unreliable and fabricated the account to win favour in the divorce settlement.

Summary of complainant's account: After the complainant told her husband, the defendant, about an extra-marital affair she had while on holiday, the defendant became aggressive with her during sex. Despite the complainant's objections the defendant would strangle her and force her to have sex in a variety of different ways.

Case 7: De facto partner repeat sexual and physical violence

Charges: Rape x 5; assault x 3

Result: Guilty rape x 5 and assault x 2; not guilty assault x 1

Defence: Consent. Due to a physiological problem the defendant did not realize the complainant was not consenting.

Summary of complainant's account: Over the course of their relationship the defendant became more and more violent with the complainant. He would force her to have sex and strangle her when doing so.

Case 8: De facto partner repeat sexual and physical violence

Charges: Rape x 9; assault x 7, kidnapping x 1

Result: Guilty rape x 2 and assault x 5; not guilty rape x 1 and kidnapping x 1; discharged without conviction rape x 5 and assault x 1; hung jury rape x 1 and assault x 1

Defence: Consent. The complainants account was unreliable due to alcohol and drug abuse.

Summary of complainant's account: The defendant was violent with the complainant over the course of their long term relationship. He would physically abuse her and force her to have sex against her will.

*Case 9: Acquaintance rape***Charges:** Rape x 1**Result:** Guilty**Defence:** Consent. Over time the complainant's memory for what happened has become unreliable.**Summary of complainant's account:** Over thirty years ago the complainant one evening when she when an acquaintance who she did not know well paid an unexpected visit. After falling asleep in the lounge the complainant awoke and having forgotten the defendant in the house. On entering the bedroom she found the defendant lying on the bed where he forced her onto the bed. When the complainant attempted to resist the defendant responded violently. He held the complainant down and raped her. Once the defendant finished he got up and left.*Case 10: Stranger rape***Charges:** Rape x 1**Result:** Guilty (retrial)**Defence:** Consent. The complainant wanted to hide that she had consensual sex with a stranger.**Summary of complainant's account:** The complainant was parked outside a pub when a male stranger approached her for a cigarette. When she went to pass him one he forced the door of the car open and got in. After the complainant complied with the defendants request to take him home he pulled her from the driver's seat to where he was seated in the passenger seat and raped her. He left the car and the complainant drove home.

Complainant declared hostile

The following two cases where the complainant was declared hostile during trial were not included in the within subject analysis reported in Chapter 4.

*Case 11: De facto partner repeat sexual and physical violence***Charges:** Rape x 4, assault x 3, kidnapping x 1**Result:** Not guilty rape x4, assault x 1 and kidnapping x 1; Guilty assault x 1**Defence:** Consent. The complainant lied to police about what happened.

Summary of complainant's account: The defendant was violent with the complainant over the course of their long term relationship. He would physically abuse her and force her to have sex.

Method of evidence: The complainant was declared hostile and the prosecutor cross-examined her on the inconsistencies between the police interview and evidence in chief.

Case 12: De facto partner repeat sexual and physical violence

Charges: Rape x 2, assault x 3

Result: Discharged without conviction all rapes; guilty plea on all assaults

Defence: Consent. The violence occurred but the complainant made up the rape charges because she was angry at the defendant for having anal sex with her.

Summary of complainant's account: After a night out the complainant and her partner, the defendant, returned to their home address. They began to have consensual anal sex but the complainant asked the defendant to stop because it was painful. The defendant did not stop. Afterwards the defendant became angry and violently assaulted the complainant.

Method of evidence: The complainant was declared hostile and the prosecutor cross-examined her on the inconsistencies between the police interview and evidence in chief.

Written statement taken from complainant

The following two cases were recorded on a written statement by police and were not included in the within subject analysis reported in Chapter 4.

Case 13: Ex-partner violation and acquaintance rape

Charges: Rape x 1; indecent assault x 2

Result: Not guilty on all counts (retrial after jury hung at first trial)

Defence: Identity. The complainant did not clearly see the offender and was mistaken about his identity.

Summary of complainant's account: After a night drinking the complainant fell asleep and was awoken by the feeling of someone violating her. In her semi-awake state the complainant recognised the defendant as an acquaintance she knew. The complainant moved causing the defendant to stop what he was doing. The complainant fell asleep and again awoke to the defendant touching her. The complainant removed his

hands from her body. The defendant moved away and the complainant got up and left the house..

Reason not video interviewed: Unknown

Case 14: Workplace sexual violation

Charges: Rape x 1; Indecent assault x 2

Result: Not guilty on all counts

Defence: It didn't happen. The complainant invented the allegations to get back at the defendant for losing his temper with her.

Summary of complainant's account: The complainant and the defendant who are employed in the same office were both working late. The defendant approached the complainant began to massage her and kiss her. The complainant tried to push him away and told him to stop. A short time later, as the complainant was attempting to leave the building the defendant pushed her onto a table and sexually violated her. When he stopped doing this the complainant left the building and drove home.

Reason not video interviewed: Initial statement made for employment investigation.

General observations about the differences between the interview and direct evidence

There were some general differences between the interview and direct evidence that are worth documenting to assist with future research. Photographic booklets were not used in interview, but were readily introduced in direct evidence. These included photographs of the scene, clothing, relevant objects and the complainant's injuries. Most commonly, the prosecutor would use the complainant to orientate the jury by using the photographs to describe the exact location of the events. Prosecutors would also often explore other aspects of the investigation with the complainant. This was not done to the same degree in the investigation, potentially due to the inaccessibility of this information at that time. Featuring regularly in this regard was asking the complainant to work through text messages on her mobile phone. Usually these messages were between the complainant and the defendant both before and after the alleged offending. On occasions this would also include introducing material that was likely to damage the complainant's credibility if later brought up in cross-examination, as it often was.

Appendix G: Prosecutor questionnaire for transcript study

NOTE: Not all information gathered from the questionnaire is reported in this doctoral thesis

Information sheet:

Improving the investigations and prosecutions of adult sexual assault cases

Dear sir/madam,

Please find attached a questionnaire relating to the sexual violation trial you have just prosecuted.

Who is conducting the research?

Nina Westera (PhD student)
Investigative Interviewing Unit
National Criminal Investigation Group, NZ Police
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Associate Professor Mark Kebbell, Chief Investigator
Centre of Excellence for Policing and Security, Mt Gravatt

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Dr Rebecca Milne
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University of Portsmouth, England
becky.milne@port.ac.uk
Phone: (+44) 2392 843 927

Why is the research being conducted?

This research seeks to examine how to improve investigative and prosecutorial practices in adult sexual assault cases. This questionnaire is a component of Senior Sergeant Nina Westera's partial completion of a Doctor of Philosophy (PhD) at Griffith University, Queensland.

Approval for this research has been granted by your law firm.

What you will be asked to do

The questionnaire should take about 10 minutes to complete and relates to the sexual violation trial you have just prosecuted. **Please complete the questionnaire as soon as possible after the complainant has given her evidence.** Part A involves rating your opinion on the how the complainant presented during her evidence in chief and, Part B, during cross-examination. Part C asks for information about the reasons for the way of

evidence that was used at trial. Part D requests your demographic details to enable the researcher to conduct a comparative analysis of the results.

The expected benefits of the research

These results will be reported back to prosecutorial agencies, the police and the judiciary to assist with improving practices in adult sexual assault cases. The results will also be published in an academic journal to help inform practices internationally.

Risks to you

There are no anticipated risks to you.

Your participation is confidential and voluntary

Participation in the questionnaire is anonymous. Individuals cannot be identified from the questionnaire and will not be identifiable to the researchers or any parties in the publication of the results of this research. Your participation in this questionnaire is completely voluntary. Completion of the questionnaire implies consent for the researcher to use the data. **The research does not involve access to, collection or generation of identified personal information.**

Further information

Please contact any member of the research team if you require further information.

Ethical conduct of this research

Ethical approval to conduct this research has been granted by the Griffith University Ethics Committee. Griffith University conducts research in accordance with the *National Statement on Ethical Conduct in Human Research*. If you have any concerns or complaints about the ethical conduct of this research please contact: the Manager, Research Ethics, Office for Research, Bray Centre, Nathan Campus, Griffith University (ph: 0061 7 3735 5585 or research-ethics@griffith.edu.au).

Feedback to you

A copy of the PhD thesis produced as a result of this research will be provided to your law firm.

Please keep this information sheet for your own reference.

Thank you for your assistance.

SEXUAL VIOLATION TRIAL QUESTIONNAIRE

Case Ref: _____

PART A: THE COMPLAINANT DURING EVIDENCE IN CHIEF

Please rate the following for your overall impression of the complainant during her **evidence in chief** (this includes on the video if her evidence in chief was given by way of video):

1. How **accurate** (i.e. correct) do you think the complainant's evidence was?
 Not at all 1 2 3 4 5 6 7 Very
2. How **easy to understand** do you think the complainant's evidence was?
 Not at all 1 2 3 4 5 6 7 Very
3. How **coherent** do you think the complainant's evidence was?
 Not at all 1 2 3 4 5 6 7 Very
4. How **logical** do you think the order of the complainant's evidence was?
 Not at all 1 2 3 4 5 6 7 Very
5. How **concise** do you think the complainant's evidence was?
 Not at all 1 2 3 4 5 6 7 Very
6. How **ambiguous** do you think the complainant's evidence was?
 Not at all 1 2 3 4 5 6 7 Very
7. How **inconsistent** do you think the complainant's evidence was (within their account)?
 Not at all 1 2 3 4 5 6 7 Very
8. How **closely** do you think the complainant's evidence **followed a story telling narrative**?
 Not at all 1 2 3 4 5 6 7 Very
9. How **memorable** do you think the complainant's evidence was?
 Not at all 1 2 3 4 5 6 7 Very
10. How **gruesome** do you think the complainant's evidence was?
 Not at all 1 2 3 4 5 6 7 Very
11. How **credible** (i.e. believable and trustworthy) do you think the complainant was?
 Not at all 1 2 3 4 5 6 7 Very
12. How **confident** do you think the complainant was?
 Not at all 1 2 3 4 5 6 7 Very

13. How **emotional** do you think the complainant was?

Not at all 1 2 3 4 5 6 7 Very

14. How **stressful** do you think the experience of giving evidence was for the complainant?

Not at all 1 2 3 4 5 6 7 Very

PART B: THE COMPLAINANT DURING CROSS-EXAMINATION

Please rate the following for your overall impression of the complainant during her **cross-examination**:

15. How **accurate** (i.e. correct) do you think the complainant's evidence was?

Not at all 1 2 3 4 5 6 7 Very

16. How **easy to understand** do you think the complainant's evidence was?

Not at all 1 2 3 4 5 6 7 Very

17. How **coherent** do you think the complainant's evidence was?

Not at all 1 2 3 4 5 6 7 Very

18. How **logical** do you think the order of the complainant's evidence was?

Not at all 1 2 3 4 5 6 7 Very

19. How **concise** do you think the complainant's evidence was?

Not at all 1 2 3 4 5 6 7 Very

20. How **ambiguous** do you think the complainant's evidence was?

Not at all 1 2 3 4 5 6 7 Very

21. How **inconsistent** do you think the complainant's evidence was (within their account)?

Not at all 1 2 3 4 5 6 7 Very

22. How **closely** do you think the complainant's evidence **followed a story telling narrative**?

Not at all 1 2 3 4 5 6 7 Very

23. How **memorable** do you think the complainant's evidence was?

Not at all 1 2 3 4 5 6 7 Very

24. How **gruesome** do you think the complainant's evidence was?

Not at all 1 2 3 4 5 6 7 Very

25. How **credible** (i.e. believable and trustworthy) do you think the complainant was?

Not at all 1 2 3 4 5 6 7 Very

26. How **confident** do you think the complainant was?

Not at all 1 2 3 4 5 6 7 Very

27. How **emotional** do you think the complainant was?

Not at all 1 2 3 4 5 6 7 Very

28. How **stressful** do you think the experience of giving evidence was for the complainant?

Not at all 1 2 3 4 5 6 7 Very

PART C: ALTERNATIVE WAYS OF EVIDENCE

29. Was an alternative way of evidence application made to play the video as evidence in chief? ☐ Yes ☐ No

If no, why not?

_____ *If no, go directly to Question 32*

30. Was the alternative way of evidence application granted?

☐ Yes ☐ No

31. Please tick the boxes below that best describe how the complainant's evidence was given (tick as many boxes as apply):

- ☐ Video as evidence in chief ☐ Screens evidence in chief
☐ CCTV evidence in chief
☐ CCTV cross-examination ☐ Screens cross-examination
☐ Other (please specify)

32. Did the complainant watch her video interview before giving evidence?

☐ Yes ☐ No ☐ Don't know ☐ N/A (there was no video)

If yes, how long before she gave evidence?

_____ days ☐ On the same day ☐ Don't know

33. During the trial, what was the defence case? (e.g. consent, it didn't happen, mistaken identity; if more than one defence please list from most to least significant)

PART D: DEMOGRAPHICS

Please indicate:

34. The time elapsed between the completion of the complainant's evidence and today:
_____ days

35. Your gender: ☐ Female ☐ Male

36. Your age: _____ years

37. Your length of time as a prosecutor: _____ years

Please return the completed questionnaire to the liaison person in your office.

Thank you for your time

Appendix H: Coding guidelines and schedule**CODING GUIDELINES***PHASE 1: QUESTION ANALYSIS*

Use a spread-sheet to code the data with each row representing a response detail and each column representing one of the steps detail below.

Step 1	Number the question and response sets Starting from 1 number each question and response set.
Step 2	Question coding Code each question asked into one or more of the following 10 categories: O = open C = specific closed YN = closed yes/no L = leading F = forced choice
Step 3	ECI techniques Code each ECI technique used into one of the following categories: EC = encourage to concentrate RE = report everything TC = transfer control DG = don't guess MR = mental reinstatement of context FR = free report SP = sketch plan WC = witness compatible questioning IM = imaging CO = change order CP = change perspective Assign each technique used with a code of: 2 = fully and correctly applied 1 = attempted but not fully applied 0/blank = not applied
Step 4	Response word count

	Count the number of words provided in response to each question
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PHASE 2: CONTENT & CONSISTENCY ANALYSIS

Only code and analyse those response sets that relate directly to the charges as specified below.

Step 1	<p>Offence</p> <p>Code each response detail that proves the indictments with the offence it relates to:</p> <p>R = rape</p> <p>U = unlawful sexual connection</p> <p>I = indecent assault</p> <p>A = assault</p> <p>T = threatens to kill</p> <p>K = kidnapping</p> <p>G = general offences rather than specific offence</p> <p>For multiple charges of the same offence also assign a number code to each one e.g. two counts of rape = R1 & R2</p>
Step 2	<p>Response detail</p> <p>Code each response detail into one of the following categories:</p> <p>A = physical action</p> <p>V = verbal action</p> <p>C = cognitive action (thought)</p> <p>E = emotion</p> <p>P = person / object / surrounding description</p>
Step 3	<p>Consistency coding – Investigative interview and evidence in chief</p> <p>Compare the details between the investigative interview and evidence in chief using the investigative interview as the starting point using one of the following codes:</p> <p>C = consistent</p> <p>O = omission</p> <p>D = distortion</p> <p>X = contradiction</p>

	N = new
	Count the number of details in each category.

Any difficulties in classification must be noted and discussed until consensus is achieved. The coding guidelines should be updated with these decisions to maintain a full record of coding practice.

Coding Guidelines

PHASE 1: QUESTION ANALYSIS

Step 1: Number the questions and response sets

For the purpose of indexing number each Q & A set in the transcript in chronology from 1 onwards.

General guidelines

- Investigative interview and evidence in chief are numbered separately.

Step 2: Question coding

Classify each question asked by the investigative interviewer or prosecutor into one or more of the following categories:

- (1) **Open questions:** questions that require more than a few words to answer (e.g., "Describe the man").
- (2) **Specific closed questions:** questions that require only a few words to answer (e.g., "What colour was the man's jacket?").
- (3) **Yes/No questions:** questions that can be answered with a yes or no but are not leading (e.g., "Was the man wearing a green jacket?").
- (4) **Leading questions:** questions that suggest an answer (e.g., "was his jacket green?" is leading because it implies the jacket was green or in a more heavily leading manner: "the man's jacket was green jacket wasn't it?") Also, "Did you see the man's green jacket?" when the jacket has not previously been mentioned by the witness is a leading question. The definition depends on the prior recall of the witness.
- (5) **Negative questions:** questions with the word "not" (e.g., "Wasn't the man wearing a green jacket?").

- (6) **Multiple questions:** when two or more questions are asked at once (e.g., “Was the man’s jacket green? And was it a zipped up jacket?”). Also includes multiple concepts (e.g. “What does he look like and was he wearing a jacket?”).
- (7) **Forced choice questions:** questions that limit the complainant’s response to a series of options (e.g., “Did he have the jacket on or off?”).

General guidelines

- Only code Q & A response sets that are about the evidence given e.g. ignore responses relating to the interview process, whether the witness is comfortable, the need for breaks, administrative procedures.
- If a question covers more than one ‘Q & A’ response set use the identifying number at the commencement of the question. e.g. when the response is interrupted by a head nod, or the question is interrupted by a ‘yes’ indicating the witness understands.
- Categories are not exclusive i.e. Questions that fit into more than one category should be coded into different categories accordingly. (e.g. “you wanted to have sex with him, didn’t you?” is coded as both a leading question and a negative question).
- All multiple questions also receive a code for question type based on the last part of the question. e.g. ‘what colour was the t-shirt? Was it red?’ is a multiple and an inappropriate closed question (‘was it red?’).
- All negative questions also receive a code according to question type e.g. ‘you were wearing a hat weren’t you?’ is a negative and an inappropriate closed question. Generally because of the phrasing of the question most negative questions are inappropriate closed.
- Code questions that are officially yes/no but clearly want an extended answer as open or probing. Look for what, how etc. e.g. ‘Can you tell us what happened when he arrived?’
- Count echo probing (i.e. repeating what the part of the interviewee’s response the question) according to the intended function of the questions (e.g. ‘A. and I

was lying on my stomach... Q. On your stomach...' would be an open question because it encourages a full range response)

- Summaries and instructions setting the scene for the witness are not counted as questions, unless a response is invited from the witness.
- Questions interrupted by the witness before being completed are coded according to the intended function of the questions
- Guggles such as nods or hmmm or similar are not included as a response.
- Count questions or responses interrupted by guggles as one item e.g. "yeah", "mhm", "ok". This includes the interviewee confirming the content of a summary without invitation
- The drawing of a sketch plan is also an open question

Step 3: ECI techniques

Code and score the use of the eight ECI techniques:

2= fully and correctly applied

1 = attempted but not fully and correctly applied

0/blank = not applied/attempted

The eleven techniques are:

(1) Encourage concentration: This variable was marked as present (2 on the rating scale) if the interviewer explained that remembering is hard work and that in order to remember as much as possible the witness would need to concentrate and think hard about the to-be-remembered event. This variable was marked as attempted (1 on the rating scale) if the interviewer simply acknowledged that remembering was a difficult task.

(2) Report everything: This variable was marked as present (2 on the rating scale) when the interviewer instructs the witness to report absolutely everything that they remember without editing, even if the information seems unimportant, trivial, or partially remembered e.g. "Please tell me absolutely everything that

you remember about ...even if you think that what you remember is not important” and “Please tell me everything and don’t leave out any details even if you can only remember some of the information”. This variable was marked as attempted (1 on the rating scale) if the interviewer instructed the witness to tell what they remember without stressing the importance of telling absolutely everything however trivial e.g. “Tell me everything you remember” or “Explain everything to me”.

(3) Transfer control: This variable was marked as present (2 on the rating scale) if the interviewer clearly explained to the witness that this is their interview and/or they will be doing all the talking because experienced what happened. Additionally the officer is merely a facilitator and/or has no/minimal knowledge of what happened. This variable was marked as attempted (1 on the rating scale) if the interviewer included only the instruction about the importance of the witness’s recall or the officer’s role.

(4) Not to guess/fabricate: This variable was marked as present (2 on the rating scale) if the interviewer explained to the witness that if he/she could not remember they should say so and should never guess or fabricate or fill in the gaps. This variable was marked as attempted (1 on the rating scale) if the interviewer’s instruction not to guess/fabricate was brief and did not include both instructions (not to guess or fabricate).

(5) Mental reinstatement of context: This variable was marked as present (2 on the rating scale) if the interviewer instructed the witness to reconstruct the environmental and emotional context of the to-be-remembered event. This could be done by asking the witness to recall features of the physical environment, and to describe their internal emotions in a series of instructions leaving time between each instruction for the witness to think e.g. “Try to think back to the day that you witnessed...”, “Try to create a picture in your mind of what you witnessed”, “On the day that you witnessed...how were you feeling...where were you going?”, and “Try to think about what you could hear...who were you with...what was the weather like?”. This variable was marked as attempted (1 on the rating scale) if the interviewer’s instructions were too brief or insufficiently clear as to facilitate mental reinstatement of context

(usually just a single instruction) e.g. “Think back to that day” or “Think about who you were with when you saw ...”.

- (6) Free recall account:** This variable was marked as present (2 on the rating scale) if the interviewer asked the witness to give an initial free recall account of what they had experienced and did not interrupt that account. This variable was marked as attempted (1 on the rating scale) if the interviewer asked the witness to give an initial free recall account but interrupted that account.
- (7) Witness compatible questioning:** This variable was scored as present (2 on the rating scale) if the topics of the interviewers’ questions followed the same sequence as the topics that were remembered by the witness during free recall. This variable was marked as attempted (1 on the rating scale) if the interviewer began the interview following the witnesses’ sequence of recall but then began to jump between topics. If the interviewer jumped around between topics from the very start of the interview the variable was marked as absent.
- (8) Sketch Plan:** This variable was scored as present (2 on the rating scale) if the interviewer asked the witness to draw a sketch plan and later use the sketch plan to talk through what happened. This variable was marked as attempted (1 on the rating scale) if the interviewer only asked the witness to draw a sketch plan and did not later use the sketch plan as a recall aid.
- (9) Generate and probe images:** This variable was scored as present (2 on the rating scale) if the interviewer asks the witness to picture in their mind specific details about the event and asks the witness to describe the contents e.g., “focus on the best view you had of XXX. Thinking about that view describe him in as much detail as possible”. This variable was marked as attempted (1 on the rating scale) if the interviewer encourages the witness to focus back but does not seek to activate a particular image or activates an image but does probe the image.
- (10) Change temporal order:** This variable was scored as present (2 on the rating scale) if the interviewer clearly instructs the witness to go through what happened in a reverse order by starting at the last thing that happened and working back to the beginning of the event. e.g., “describe the last thing that happened in the bedroom...”, now “ describe what happened immediately

before that...” etc. This variable was scored as attempted (1 on the rating scale) if the interview did not give clear instructions and was therefore likely to confuse the witness.

- (11) Change perspectives:** This variable was scored as present (2 on the rating scale) if the interviewer asks the witness to recall the event from a different ego-centric perspective. e.g., “describe his haircut as if you were a hairdresser...”. This variable was scored as attempted (1 on the rating scale) if the interviewer misuses this instruction and encourages imagination e.g., “describe what happened as though you are a bird in the sky”

General guidelines

- For each technique code it against the question it relates to. Witness compatible questioning is an exception to this rule and an overall score of this variable should be given to the account.

Step 4: Response count

Count the number of words for each response.

General guidelines

- Do not count filler comments e.g. ‘uhm’, ‘ahhh’ or when the same word is repeated twice in a row without a purpose e.g. back, back

PHASE 2: CONTENT & CONSISTENCY ANALYSIS

Step 1: Offence

Identify and code each response detail that directly proves the indictments that were laid according to which offence it relates to:

R = rape

U = unlawful sexual connection

I = indecent assault

A = assault

T = threatens to kill

K = kidnapping

G = general offences rather than specific offence

Use a unique code for each indictment, for example two counts of rape = R1 & R2

General guidelines

- Only code Q & A response sets directly relating to the time of the offending as defined by the indictments i.e. the circumstances of the rape event itself, not the background or aftermath
- Indications of consent occurring prior to the actual acts of the offending are included
- Prior sexual conduct is included if it goes towards consent
- Do not code dates, locations and identity unless they are facts in issue
- Do not code information in the investigative interview that is clearly inadmissible as evidence i.e. hearsay, prior criminal conduct of the defendant
- Description of injuries are scored (but not follow up treatment)
- Clothing and location descriptions are only included if directly relevant to the offending

Step 2: Offence response detail

Divide the responses into individual detail units = word or phrase identifying or describing individuals objects or events. Each detail containing a specific and unique piece of information is coded with one point and placed into one of the five categories described below scored one point.

Action details: Generally verb or adverb phrases describing actions. Subdivided into four categories:

- (1) **Physical action details**
- (2) **Verbal action details**
- (3) **Cognition details**
- (4) **Emotion details**

Description details: Generally noun or adjective phrases for descriptive details including appearance and location features:

- (5) **Person/object/location descriptions**

General guidelines

- One unit of detail is “defined as a word or phrase identifying or describing individuals, objects, or events (including actions) integrally related to the alleged incident being investigated”
- Each unique unit of detail is only coded once (i.e. repeats are not coded)
- Example 1: “he was 174cm and wore a yellow t-shirt” scores 3 person description details ‘174cm tall’, ‘wore a yellow’, ‘t-shirt’
- Example 2: “he turned around and shot the guy in the shoulder” scores 3 action details ‘he *turned around*’, ‘*shot the guy*’, ‘*in the shoulder*’
- Example 3: “he asked me if he could continue” scores 2 verbal details ‘he *asked me*’, ‘*if he could continue*’
- Example 4: “he jumped on the guy and stuck a knife in his stomach” scores 3 action details: ‘he *jumped on the guy*’, ‘*stuck a knife*’, ‘*in his stomach*’.
- Qualifying statements are not coded as a detail e.g. ‘might’; ‘maybe’
- Crying is coded as emotional
- Don’t know and I can’t remember responses are not counted
- Stating a negative detail scores if it provides new information that can’t otherwise be implied, e.g. ‘no one else was there’

Step 4: Consistency analysis investigative interview with evidence in chief

For all details rated in the content coding conduct an analysis of consistency between interview types. To do so:

- a) Sort the investigative interview details by offence type and element
- b) Compare the investigative interview details to the evidence in chief details

Classify each detail of the investigative interview with evidence in chief into one of five categories:

- (1) **Consistent:** items that match in the investigative interview and evidence in chief

(2) Omission: items present in the investigative interview but not present in evidence in chief.

(3) Distortion: items that are different between the investigative interview and evidence in chief but not entirely contradictory (e.g. “blue jumper” verses “red jumper”)

(4) Contradiction: items that are entirely contradictory between the investigative interview and evidence in chief (e.g. “great view” verses “bad view”);

(5) New: items present in evidence in chief but not present in the investigative interview.

Count the number of consistent responses according to detail type (e.g. verbal consistent, verbal new, verbal contradiction; emotion consistent, emotion distortion, emotion contradiction etc).

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